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Fundamental Principles

OF THE

L A W S O F C A N A D A ,

AS THEY EXISTED UNDER THE NATIVES, AS THEY WERE CHANGED UNDER THE
FRENCH KINGS, AND AS THEY WERE MODIFIED AND ALTERED UNDER
THE DOMINATION OF ENGLAND.

The general principles of the Custom of Paris, as laid down by the most eminent
authors, with the Text, and a literal translation of the Text.

The Imperial and other Statutes, changing the Jurisprudence in either of the
Provinces of Canada at large.

PREFACED

By an historical sketch of the origin and rise of religious and political institutions, amongst the principal nations of the world, from the remotest periods to the present time ; of the origin, rise, and successive changes of the constitutional laws of France ; of the common, canon, and statute laws of England, so far as they operate on the jurisprudence of Canada, and of the general government, religious, military, civil and criminal, laws of the natives, particularly of the Huron and Iroquois Indians, at the time the interior of the country was discovered by Cartier : supported by authorities.

Compiled with the view of assisting Law Students, in directing them in the course of their studies.

By M. Rouzet

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INTRODUCTION.

SECTION I.—STUDY OF THE LAW.—*I. Criminal Law. III. Jurors. IV. Justices of the Peace. V. Judges. VI. Members of the National Councils. VII. Profession of the Law. VIII. Advocates. IX. Plan of Studies.*

SECTION II.—GENERAL DEFINITIONS.—*I. Of the Law. II. Customs. III. Statutes, Capitularies, Ordinances, Edicts, and Arrets. IV. Division of Statutes. V. Personal Statutes. VI. Real Statutes. VII. Universal Statutes. VIII. Special Statutes. IX. Jurisprudence. X. Justice. XI. Division of Law. XII. Law of Nature. XIII. Law of Nations, in time of War, in time of Peace. XIV. Several Rules of the Law of Nations. XV. Public Law. XVI. Civil Law. XVII. General Rules of the Roman Law, to make and expound Written Laws. XVIII. General Rules to be observed in the construction and in expounding Statutes in the English Constitution. XIX. Summary of the British Constitution. XX. Summary of the Constitution of Scotland.*

I.—Study of the Law.

THERE are books, instructive and easy to be understood, written upon all sciences, even upon some that are useless. There are none in Canada which present in a familiar manner to its inhabitants the rules they are to follow in the application of the laws under which they live, and what they are to do in the intercourse they have with their debtors, their creditors, their neighbours, and how they ought to act when unjust demands, or insidious accusations, are made against them. Their ignorance in these matters compels them to commit their dearest interests into different, mercenary, and sometimes deceitful hands, and to see by the eyes of others things that they ought to see with their own. Although a blind man may have no^{ing} to fear from the one who leads him, it is natural to suppose that he would^{ve} some advantage, at least some satisfaction, in seeing some of his road by him^{self}.

II.—Criminal Law.

With regard, in particular, to the criminal law, a knowledge of^{of} the utmost importance to every one; for no rank or elevation in life, no^{lightness} of heart, no circumspection of conduct, no prudence, should tem^{man} to conclude that he may not, at some time or other, be deeply interesteⁿ in discovering what is the criminal jurisprudence of his country.

The thorough comprehension of the laws, in^{their} minute distinctions, is perhaps too laborious a task for any one but a lawyer^{by} profession; still an understanding of the leading principles is absolutely nec^{sary} to every one, so as to guard against gross and notorious impositions, and^{be} protected from committing acts of injustice in the decisions he is in the c^{ommon} course of life by law compelled to give.⁽¹⁾

III.—Jurors.

Almost every man is liable to be called upon to establish the rights, to estimate the injuries, to weigh the accusations, and sometimes to dispose of the lives of his

(1) Blackstone's Study of the Law, page 8.

follow subjects, whilst serving upon juries. In this situation he must decide, and that upon his oath, questions of nice importance, in the solution of which some legal skill is requisite, especially when the law and the fact are blended together. The incapacity of jurors to do this, unavoidably throws more power into the hands of the judges than the constitution intended, and thus allow others to dispose of fortunes and lives, which, by law, are committed to their care.

IV.—Justices of the Peace.

When we consider the profound learning, and the practical knowledge, which the magistrate, in conscience and decency, ought to possess, we cannot help being surprised to see with what facility the commissions of the peace are filled up.—The magistrate is bound to maintain good order in his neighbourhood; protect the peaceable and industrious; heal petty dissensions, which is so desirable; prevent vexatious prosecutions, which are so common; to point out to jurors the course they are to follow in their investigations of points of law, and points of fact.—How will he perform his task? Should he not be like other justiciaries, not only the best, but also the most learned; (1) else when he has mistaken his authority, through passion, through ignorance, or absurdity, he must become an object of contempt for his inferiors, and of censure for those to whom he is accountable for his conduct. (2)

V.—Judges.

Should a judge, in the most subordinate jurisdiction, be deficient in the knowledge of the law, it would reflect infinite contempt upon himself, and disgrace upon those who were instrumental in his appointment. But how much more serious and affecting is the case of a superior judge, if, without any skill in the laws, he should venture to decide a question, upon which the welfare and subsistence of the families may depend; where the chance of his judging right or wrong is barely equal; and where, if he chance to judge wrong, he does an injury of the most alarming nature, an injury without possibility of redress. (3)

VI.—Members of the National Councils.

Most men, at some period or other of their lives, are ambitious of representing their country in its national councils; those who are ambitious of receiving so high a trust, would also do well to remember its nature and importance. The constitution has profusely bestowed protection, privileges, and honours upon their members, freedom of speech, exemption from arrest, protection of domestics, mode of address; all is combined to make them bear what they ought to be—the most honourable and the most learned men of the Commonwealth. (4) They are not thus distinguished from the rest of their fellow subjects merely by favour, and so that they may privilege their persons or domestics, that they may enlist under party banners, that they may grant or withhold supplies, but upon considerations far more

(1) See Magna Charta, ch. 22.

(2) Blackstone's Commentaries, vol. 1 of the Study of the Law, page 8, § 9.

(3) Blackstone's Study of the Law, vol. 1, page 11, § 9.

(4) Infra, see British Constitution.

interesting. They are the guardians of the constitution ; the makers, repealers, and interpreters of the laws ; delegated to watch, to check, and to avert every dangerous innovation ; to propose, to adopt, and to cherish every solid and well-weighed improvement ; bound by every tie of nature, of honour, and of religion, to transmit that constitution and those laws to their posterity, amended if possible, at least without any derogation. And how unbecoming must it appear in a member of the legislature, to vote for a new law, who is utterly ignorant of the old. What kind of interpretation can he be enabled to give, who is a stranger to the text upon which he comments ? Indeed it is perfectly amazing that there is no other state in life, no other occupation, art or science, in which some method of instruction is not looked upon as requisite, except only the science of legislation, the noblest, but the most difficult of any.(1)

VII.—Profession of the Law.

Many aspire to the honour of becoming the guides and advisers of their fellow citizens in their difficulties, but apparently few do reflect that, even with the most upright views, they will expose themselves to become the instruments of fraud, should they not acquire a profound knowledge of the laws of their country, and sufficient skill to interpret and apply them, and that it requires the studies of their whole life to attain these objects.(2)

The laws of every nation are more or less mixed with the laws of nations that have passed away, but none more than the laws of Canada, which have for their basis the jurisprudence of France and England. The laws of France being composed of the laws and customs of Celtic and other Asiatic tribes, of the Romans, of Germanic hordes, and of the Franks.(3) Those of England, of the customs and laws of the Britons, of the Romans, of the Saxons, of the Danes, and of the Normans.(4)

In the jurisprudence of both France and England, as in almost every system of jurisprudence, the Roman law holds the most dominant place ; it is the great source whence they have been derived, and they still recognize the influence of its principles and doctrines.(5)

As to Canada, as late as 1535, it was covered by numerous Indian nations, having their forms of government, their religion, and their laws. More than ninety languages were counted in the interior : some of them were mixed with Galic and Welsh dialects. The north was occupied by the Esquimaux, Têtes de Boule, Sioux, &c. ; the Iroquois, Hurons, Algonquins, the borders of the Saint Lawrence. The government of the Iroquois and Hurons was modelled on that of the Lycians ; their religion partook of the Mosaic code, of paganism, of the doctrines of Confucius and of Zoroastre ; their military mode of warfare that of the Scythians.(6) Of these laws and customs almost nothing remains, but they are still a monument interesting in the history of the revolution of empires.

(1) Blackstone's Commentaries, vol. 1, pages 7 and 8, § 9 and 10.

(2) Massé, Science des Notaires, preface.

(3) Histoire de France.

(4) Crabb's Preface to the History of the English Law.

(5) Burges' Commentaries on Colonial and Foreign Laws.

(6) Lafitau des Mœurs des Sauvages Américains, comparés aux mœurs des premiers temps.

The laws of Canada are now composed—first, of the Roman jurisprudence, when the other laws are silent; second, of the laws of the kingdom of France, with the practice of the court of the parliament of Paris, as they were in 1663; third, of the edicts and royal ordinances of the kings of France, relative to Canada, recorded in the registers of the superior council of Quebec; fourth, the *arrets* and regulations of this council, together with the ordinances and judgments of the intendants, from 1663 to the conquest, 1759,(1) fifth, of the criminal laws of England, as they existed in 1774;(2) sixth, of the jurisprudence of Canada in civil matters, except on land held in free and common soccage, where the civil laws of England rule as to inheritance, dower, matrimonial rights and alienation of lands, from 1829;(3) seventh, of all the statutes of Great Britain relative to Canada, of the ordinances of the governors and legislative council of the province, from 1774 to December, 1791,(4) when the province was divided; eighth, of the statute law of both provinces, in Upper Canada to this day, and in Lower Canada to 1838; ninth, of the ordinances of the special council of Lower Canada to the 10th February, 1841, the provinces being re-united.

Nor is this all, the combined influence of Christianity and commerce, and the facility of communications having established such free intercourse amongst almost all nations of the earth, that an utter confusion of all rights would have ensued, had not some common principles been adopted by all nations to expound and decide upon contracts, marriages, nuptial settlements, wills, successions, foreign guardianships, foreign administrations, foreign judgments, &c., questioned amongst persons whose domicils are in different countries, having different and even opposite laws on the same subjects. Hence, new rules, resting on the basis of general convenience and of national duty, promulgated by jurists, and supported by courts of justice, have gained ground, and now command universal confidence and obedience; and when the professional man is consulted on these questions, to use the language of Daguesseau, he should answer so as to make his foreign client believe that he is his countryman, and that he studied none but the laws of his country.

VIII.—*The Advocates.*

Whoever sets limits to the science of an advocate, has not a perfect idea of the sublimity of his profession. To the qualifications necessary to be acquired in the other branches of legal knowledge, he must add those of the orator, and the orator is not perfect if, by the continual study of the purest morals, he doth not penetrate into the nature of the human heart. History must have given him an experience and anticipated old age. He must exhibit the genius and the character of the ancient orators, and that more than their ideas and their expressions; imitation must have become to him a second nature; he must speak like Cicero when Cicero imitates Demosthenes, or like Virgil, when that poet, by a difficult but noble larceny, enriches himself with the spoils of Homer. With these acquirements, the advocate may take pride in his profession, reflecting that with the thunders of

(1) Edict creating a Superior Council at Quebec, 1663.

(2) English Statute, 14 Geo. III. ch. 33.

(3) Imperial Statute, 7 Geo. IV. ch. 59, and Provincial Statute, 9 and 10 Geo. IV.

(4) English Statute, 31 Geo. III. ch. 31, 1790.

eloquence, Cicero protected kings, and that Demosthenes caused the father of Alexander himself to tremble.(1)

The want of some assistance in the rudiments of legal knowledge was felt both in France and England, as it is now here, and rules to be followed by the law students were laid down by two of the most eminent legists of the time, Daguesseau(2) and Blackstone(3), following them the students of the law in Canada will derive great advantage.

"You have," says Daguesseau to his son, "completed the ordinary course of your studies with success; but greater labours must succeed, and a larger career is opened before you. What you have done is but the first step to studies of a superior order. You have learned various languages, which are the key of literature; you have been exercised to eloquence, as far as the tenderness of your age would allow; you have perfected yourself in the science of mathematics and philosophy, so as to acquire the rectitude of imagination and the clearness of ideas necessary to separate argument from fallacy, by the rules of unsophisticated logic, and to acquire the solidity of reasoning, the order and method which are so necessary in the discovery of the truth for ourselves, and to present it to others with perfect evidence. Happy is the one who possesses these advantages; but he is not learned; all his studies have only been preparatory to study the law."

IX. Plan of Studies.

This plan may be reduced to three principal points: First—The study of religion, not with the view of being enabled to dispute upon it, and to dogmatise, but as being a study absolutely necessary to every man who has the desire of obtaining an enlightened faith, and to render to God that spiritual worship and homage that a rational being owes to his Creator. Second—The study of history; without which, the study of jurisprudence is tedious and disheartening.(4) Third—The study of law and jurisprudence. To obtain this knowledge, it is important to read some books that will teach to ascend to the first principles. The treatise of Grotius *De religione* is the most learned work on the subject; from it the clearest conclusions are drawn of the truth of the Scriptures, taken from the religion of paganism. Bossuet's discourse on the universal history is as precious. And on the laws, Domat is their equal. None have more profoundly established the true principles on which they rest, in a manner more worthy of a philosopher, an historian, a jurist, and a Christian. From the first sources, he descends to the remotest consequences; he develops them almost in a geometrical order. His work is the general plan of the civil society; the most complete that has ever appeared.(5)

A few words of the English Jurist will complete these dictates:—(6)

(1) Bernardin de St. Pierre, *Etudes de la Nature*, vol. 1. Rollin Hist. An.

(2) Daguesseau, *Instructions à son Fils*, 27 Septembre, 1716: *œuvres choisies*, vol. 2. Edit de Paris, 1776, page 1 à la 26eme.

(3) Blackstone, of the Study of the Law, academical lectures delivered at Oxford, 1758.

(4) See Terrasson *Histoire de la Jurisprudence Romaine*, first page.

(5) *Les Loix Civiles dans leur ordre naturel*, and *Le Droit Public*, by Domat, has been the foundation of Pothier's treatises.

(6) Blackstone of the Study of the Law.

If the student have enlarged his conceptions of nature and art, by a view of the several branches of genuine experimental philosophy ; familiarized himself with historians and orators ; if he have impressed on his mind the sound maxims of the law of nature, the best and most authentic foundation of human laws, reduced to a practical system in the laws of Imperial Rome ; if to the qualities of the head he has added those of the heart, affectionate loyalty to the king ; a great zeal for liberty and the constitution, and well-grounded principles of religion—the student, thus qualified, may enter upon the study of the law with advantage and reputation. But if, what is much the custom every where, the common routine of business and the daily practice is all that he has learned, routine and practice will be all that he will ever know, and the least deviation of the common practical rules will bewilder him, and make him lament all his life that he has begun by the wrong end ; and his clients will have, at their own cost, to join him.

The magnitude of the task must not deter us, for sciences are of a social tendency : they flourish best in the neighbourhood of each other ; nor is there any branch of learning but may be helped and improved by assistance drawn from others.(1) And besides there are in nature certain fountains of justice, whence all civil laws are derived but as streams ; and like as waters do take tinctures and tastes from the soils through which they run ; so do civil laws vary according to the regions and governments where they are planted, although they proceed from the same fountains.(2) To discover these fountains, and to follow their streams in their ramifications over the soil of Canada, is the object of this work.

SECTION II.—GENERAL DEFINITIONS.

Law.

Law, in its most general and extended sense, is the will of the Supreme Being ; its seat in the bosom of God ; its voice the harmony of the world. All things in heaven and earth do it homage—the very least as feeling its care—the greatest as not exempt from its power.(3) Restricted to nations, it is the result of their mutual consent ; and to commonwealths, the solemn declaration of their legislative power.(4)

Under the first French dynasties, the laws received various denominations. The principal were called laws—as, *loi gombette*, *loi repuaire*, *loi salique* ; some capitularies, or *capitulaires*, from the small chapters, or heads, into which they were divided ; other edicts, when they regarded civil matters, or constitutions or canons in religious affairs. These laws were all made by the prince, with or without the

(1) Blackstone's Study of the Law.

(2) Bacon's Digest: Advancement of Learning, vol. I. page 101.

(3) Hooker's Ecclesiastical Polity.

(4) Domat, Droit Civil, premiers principes.

assemblies of the nation. These assemblies were composed of the nobles and the bishops: there were no commons in those times. The free men who were present in these assemblies, in March or May, in open fields, called *champ de mars*, or *champ de mai*, were only allowed to give their advice, and to applaud their lords.

III. *Arrets.*

The *arrets* were judgments pronounced by the supreme sovereign courts of the realm, from which there were no appeals. These judgments in other courts, or other cases in the same courts, could only be argued as a written reason, but not as a motive of decision.(1)

The same general definition may equally apply to the laws of England. Before the Norman conquest, all public acts were called laws and ordinances, if they related to secular matters; and constitutions and canons, if they related to ecclesiastical matters. They all emanated from the king; after which they were laid before his witan, or wise men, and nobles, for their concurrence. Wherefore these codes were commonly prefaced in this manner: *Rex consilio, sapientum suorum et procerum instituit*—(the king has decreed, by the advice of his sages and nobles). These laws were simple, concise, and comprehensive.(2)

In the reign of Edward III. a distinction was made between a statute and an ordinance. If a bill did not demand *novel ley*, (a new law), it acquired by royal assent, given in these words, *le roi le voet*, (the king wills it), all the force of law, before it had passed the great seal, or was entered on the statute roll, in which case it was called an ordinance, and was considered a measure of temporary nature, that might be altered at the pleasure of the king.(3)

Customs.

Customs, which make part of the law, are established by a series of acts, constantly repeated, and derive their binding power from long and immemorial usage, coupled with the express sanction or tacit consent of the legislature;(4) in general, customs are reputed to be real statutes.(5)

Statutes.

A statute, in its general and extended sense, is every act of the legislative power, which serves as a rule for the conduct of the community: every disposition of a law is a statute, which commands, forbids, permits, rewards, or punishes.

Division of Statutes.

The statutes are divided into personal statutes and real statutes, and into universal and special statutes.(6)

Personal Statutes.

The personal statutes are those which have principally for their object the person, and treat of property only accidentally; such are those which regard birth,

(1) Repert. Jurisprudence, Guyot and Merlin, Verbo Law, Arrets.

(2) Spelman cod. Vet. L.L. Anglo Saxons; Crabb, English Law, ch. 17.

(3) See Infra, English Law, under the reign of Edward III.

(4) Domat, Droit Civil, premiers principes.

(5) Pothier, Coutume d'Orleans, ch. 1, art. 6.

(6) Wood's Institutes on Imperial or Civil Law, ch. 2, p. 35; Code Just., tit. 1.

legitimacy, freedom, the right of instituting suits, majority as to age, capacity to contract, to make a will, to plead in proper person. The civilians hold them to be of general obligation and force every where.(1)

Real Statutes.

Real statutes have for their object property; they do not speak of persons, except in relation to property. Such are those which concern the dispositions which one makes of his property, either during his life or by testament.

Universal Statutes.

Universal statutes regulate the capacity, state, and condition of persons; such as their minority, majority, emancipation, &c.

Special Statutes.

Special statutes create ability or disability to do certain acts.(2)

Jurisprudence.

Jurisprudence is the science of the law, or a collection of principles which serves to distinguish what is just from what is unjust: the art directing to the knowledge of justice.(3)

Justice.

Justice is the constant and perpetual desire of giving every one his due.(4)

Division of Law.

Law is generally divided into four principal classes:—the law of nature; the law of nations; the public law, and the civil law.

Law of Nature.

The law of nature is formed of rules which God himself has established, and which he has taught to man by the simple dictates of reason. It is an immutable justice, always and every where the same; no human power can alter it.(5) It is the impression of eternal reason which govern the universe.(6)

Law of Nations.

The primitive law of nations is as ancient as the society of mankind, and is essentially as invariable as the laws of nature. The duties of children towards their parents—the love of citizens to their country—good faith in the fulfilment of contracts—have, or ought to have, been always fulfilled. Ambition, interest, and other causes of dissention between nations, have occasioned wars and personal servitude, and have given rise to a secondary law of nations. Humanity first

(1) Louet et Brodeau, ch. 42; Boulenois, Questions Mixtes; Lacombe, Recueil de Jurisprudence; Merlin et Geyot Verbo Statutes; Story, Conflict of Law, introductory remarks; Rodenburg de Statut divers, ch. 3, page 7; Froland's Memoirs de Statuts, ch. 7, page 1 to 10; Pothier, Coutume d'Orleans, ch. 1, art. 1 to 21.

(2) Ibid.

(3) Guyot et Merlin, Repertoires de Jurisprudence; Verbo Jurisprudence.

(4) Institutes, liv. 1, 1.

(5) Domat, Loix Civiles, liv. 1, § 3; Institutes, § 11 de Juré, Nat. Gent. et Civ. liv. 9.

(6) Inst. 2, 1.

caused it to be introduced between contending armies, and rules were established in sending embassies, in entering and in concluding negotiations, treaties of peace, in declaring war, in the keeping of hostages, &c. &c.

The law of nations has in many of its parts acquired among nations much of the precision of positive law.

The modern phrases of law of nature and law of nations have a very different import than those of law of nature and law of nations of the Roman lawyers.(1)

The same rules of morality which hold together men in families, and form families into commonwealths, also link together these commonwealths as members of the great society of mankind ; and though nations acknowledge no common superior,(2) they are yet under the same obligation mutually to practice towards each other honesty and humanity.

The reduction of the law of nations to a system was reserved to Grotius. It was by the advice of Lord Bacon that he undertook the task.(3)

In the present and last century, a slow and silent, but very substantial, mitigation has taken place in the practice of war, and in proportion as that mitigated practice has received the sanction of time, it has raised from the rank of mere usage, and became part of the law of nations.(4)

Montesquieu, in his own language, says : " Le droit des gens est naturellement fondé sur ce principe, que les diverses nations doivent se faire dans la paix le plus de bien, et dans la guerre le moins de mal qu'il est possible sans nuire à leurs véritables intérêts.

" L'objet de la guerre, est la victoire ; celui de la victoire, c'est la conquête ; celui de la conquête, la conservation. De ce principe et du précédent doivent dériver toutes les loix qui forment le droit des gens.

" Toutes les nations ont un droit des gens ; les Iroquois mêmes, qui mangent leurs prisonniers en ont un. Ils envoient et reçoivent des ambassades ; ils connoissent les droits de la guerre et de la paix. Le mal est que ce droit des gens n'est pas fondé sur les vrais principes."(5)

The law of nations is naturally founded on the principle that the divers nations who compose the great society of mankind ought in peace to do each other the most good, and in war the least harm possible, without injuring their real interests. The object of war is victory ; that of victory, conquest ; that of conquest, preservation. From that principle and the preceding derive all the public laws of nations.

Every nation possesses the general principles of that law ; the Iroquois, who eat their prisoners, have them. They send and receive embassies ; they know the rights or duties of peace and of war. The mischief is, that theirs is not founded on a true basis.(6)

(1) Sir James M'Intosh's Discourse preceding his Lectures on the Law of Nature and Law of Nations, pages 4, 5, 6, and 7.

(2) Boulenois,

(3) M'Intosh ; Ibid, page 20.

(4) Story Conflict of Laws ; see also, Domat de la Nature et de l'Esprit des Loix ; Droit des Gens, page 19 ; Institute 1, 1, 1,

(5) Montesquieu, de l'Esprit des Loix, liv. 1, ch. 3 ; Story Conflict of Laws ; M'Intosh ; Ibid.

(6) Ibid.

Public Law.

The public law embraces the relations of the government with those that are governed, or the relation of each individual with the body of the commonwealth.(1)

Civil Law.

The civil or municipal law regulates the state of persons, the rights of families, and governs their contracts. Every nation has its civil law, for the government of its own people.(2)

General Rules of the Roman Law to Expound Written Laws.

It is dangerous to depend on general rules by reason of limitations and exceptions.(3) Subsequent practice is a good interpreter of an ambiguous law.(4)

Laws are made with reference to cases that shall happen for the future only, unless the law is made to explain a former law. In which case, such law rules form the date of the law it explains.

Laws ought to be made upon cases that often happen, and not on rare and accidental occurrences.(5)

The proper sense of a law is not so much in the literal wording of it as in its general design, and the reason which caused its enactment.(6) New constructions must not be put upon ancient laws.(7) Former laws must give place to the latter, and are to be enacted and determined by them.(8)

Though there is a difference betwixt a law that prohibits only, and the law that makes the act void, inasmuch as that the prohibition may exert its force by penalties, yet no act is valid that is against a law, but utterly void, though not declared to be so by special words.(9)

Doubtful Cases.

In doubtful cases the most merciful interpretation is to take place.(10)

Disjunctive Words.

Where words are in the disjunctive, it is sufficient if one part is true.(11)

A restraint to particular things destroys general words.(12)

A law that pardons what is past forbids it for the future.(13)

Of two evils or inconveniencies, the least is to be chosen, or that which is least prejudicial.(14)

Laws made for the public good cannot be set aside by private agreement.(15)

(1) Institutes, 1, 2, 1.

(2) Domat's Introduction to the Civil Law de la Nature et de l'Esprit des Loix.

(3) Digest, 15, 17, 202.

(4) Code, 1, 24, 7.

(5) Digest, 1, 3, 3.

(6) Digest, 1, 3, 17.

(7) Digest, 1, 3, 23.

(8) Digest, 1, 3, 26.

(9) Cod. 1, 11, 5.

(10) Digest, 50, 17, 56.

(11) Digest, 50, 17, 110.

(12) Digest, 50, 17, 89.

(13) Digest, 1, 3, 22.

(14) Digest, 50, 17, 200.

(15) Digest, 50, 17.

He that makes the law ought to interpret it if doubtful.(1)

It is not sufficient that laws are made, but it is necessary that they should be promulgated.(2)

In England and in all other representative governments it is not necessary that the laws should be promulgated, for to an act of parliament every man, in judgment of law, is party, as being present by his representative.(3)

General Rules to be considered in the construction of Statutes in the British Constitution.

There are three points to be considered in the construction of remedial statutes: the old law, the mischief, and the remedy. That is, how the common law stood at the making of the act; what the mischief was for which the common law did not provide; and what remedy the parliament have provided to cure the mischief. It is the duty of the judges so to construe the act as to suppress the mischief and advance the remedy.(4)

A statute which treats of things or persons of an inferior rank cannot by any general words be extended to those of a superior.(5)

Penal statutes must be constructed strictly. Thus the statute 1 Edward VI, ch. 12, having enacted that those who are convicted of stealing horses should not have the benefit of clergy. The judges conceived that this did not extend to him that should steal but one horse.(6)

Statutes against frauds are to be liberally and beneficially expounded. These are generally called remedial statutes, and it is a fundamental rule of construction that penal statutes shall be construed strictly, and remedial statutes liberally. This principle is founded on one of the laws of the twelve tables of Rome, that whenever there was a question between liberty and slavery the presumption should be on the side of liberty.(7)

One part of a statute must be so construed by another, that the whole may, if possible, stand.(8)

A saving totally repugnant to the body of the act is void.(9)

When the common law and a statute differ, the common law gives place to the statute, and an old statute gives place to a new one.(10)

Of Repealing Statutes.

If a statute that repeals another is itself repealed, the first statute is thereby revived without any formal words for that purpose.(11)

(1) Cod. I, 14.

(2) *Novelles*, 66, and *Woods' Institutes*, page 66.

(3) *Woods' Institutes*, page 97.

(4) *Blackstone's Commentaries*, vol. 1 page 87, sec. 88.

(5) *Ibid.*

(6) *Blackstone's Commentaries*, vol. 1, p. 87; see also the note containing Lord Hale's opinion.

(7) *Ibid*, page 88, § 89.

(8) *Ibid*, page 88.

(9) *Ibid*, page 89.

(10) *Ibid*, page 89, § 90.

(11) *Ibid*, page 90.

Acts of parliament, derogatory from the power of subsequent parliaments, bind not.(1)

Acts of parliament that are impossible to be performed are of no validity.(2)

SECTION III.—OUTLINES OF THE BRITISH CONSTITUTION.

The British constitution, or government, is composed of the King, in whom the executive power is vested ; of the House of Lords, which consists of peers and bishops ; and of the Commons, the members of which are, or ought to be, elected to represent the people, either by freeholders of the different counties, or by the freemen and householders of cities and sufficient boroughs.

The king is the organ of the law, the head of the church, the director of the public forces, the fountain of honour, and the medium of communication with foreign nations.

At his coronation, the king pledges himself, by oath, to govern according to the statutes of parliament, and the laws and customs of the realm ; to cause law and justice, in mercy, to be executed in all his judgments ; to maintain, to the utmost of his power, the laws of God, the true profession of the Gospel, and the Protestant reformed religion established by law.

The king is regarded by law as incapable of doing any wrong ; the responsibility of unjust or illegal measures resting solely on his ministers. He summonses parliament to meet, and can adjourn, prorogue, or dissolve it at pleasure. He can refuse his assent to any law. He nominates his privy council and the great officers of state. He has also the power of pardoning offenders ; and he is generalissimo of his fleets and armies.

The parliament is assembled by the king's writ, and the interval between its sessions must not exceed three years.

The constituent parts of a parliament are the king and the three estates of the realm. Of the latter, the lords spiritual and temporal sit in one house and vote in one body ; while the commons deliberate and vote in a separate house.

The lords temporal, of dukes, marquises, earls, viscounts, and barons, all of whom, in England, sit by their own right, the rest by election ; namely, sixteen peers, who represent the nobility of Scotland, and twenty-eight peers, who represent the nobility of Ireland.

The number of peers is about four hundred.

The peers have many privileges : they are the hereditary counsellors of the king ; they are free from arrest, unless for treason, felony, or breach of the peace ; they can only be tried by a jury of peers, except in misdemeanours, as libels, riots,

(1) Blackstone's Commentaries, vol. 1, page 90 § 91.

(2) Ibid, page 90,

perjury and conspiracy, in which cases they are tried like a commoner by a jury ; and in their absence from parliament, they can vote by proxy.

The members of the House of Commons have also great privileges ; as freedom of speech during debate, exemption from arrest during the session, for forty days after prorogation, and for forty days before the next meeting.

The special privilege, or exclusive right of the House of Commons, is the *initiative*, or right, of propounding all money bills. They enjoy also the right of forming the grand inquest of the realm, to impeach or accuse wicked ministers, partial judges, or other guilty officers of the crown.

After this high court of parliament, the next in pre-eminence is that of Chancery : its intention is to mitigate the rigours of the law ; to take cognizance of every thing connected with minors, idiots, and insane persons ; and to administer justice in cases of fraud, breach of trust, or other wrongs. The lord chancellor, or in his absence, the vice-chancellor, or the master of the rolls, sits as judge, and determines according to precedents and to equity.

The Supreme Court of Common Law, the King's Bench, is next in point of power and honour : its jurisdiction extends to the whole kingdom, and in it are determined, according to law, all matters which respect the king's peace. It is likewise a court of appeal from inferior courts ; and here, also, by a fiction in the law, the subject can issue writs for debt ; and an *habeas corpus* is granted to relieve persons wrongfully imprisoned. The judges are, the lord chief justice, and the three puisne justices.

The Court of Common Pleas is the proper court for real actions, that is, actions which concern the rights of freeholders' real property between subject and subject, founded on the common and statute law. Writs of *habeas corpus* are also granted by this court.

In England, in every county there is a sheriff, or king's deputy, who executes the king's mandates, and enforces all writs addressed to him, who summons and empannels juries, keeps criminals in safe custody, and brings them to trial ; causes judgments to be executed, as well in civil as in criminal affairs ; and at the courts, attends and protects the judges.

Next to the sheriff, are the justices of the peace, appointed by the king's commission. Their duty is to put the law in execution, relative to roads, the poor, vagabonds, vagrants, felonies, riots, assaults, &c., and to examine and commit to the custody of the sheriff, for trial, all who have offended the laws.

For the purpose of ascertaining that no person meets improperly with a violent death, coroners are chosen by the freeholders of each county to summon a jury of twelve neighbours to inquire into the cause of sudden and violent deaths, and to report thereon.

If the report implicate any one, it becomes the duty of the attorney general to bring the person implicated to trial.

Attorney General.

This office is so important that common language conveys but imperfectly an idea of its duties. Like the universal genius of the Stoicians, the attorney general is the soul of social order ; all rests under the safeguard of his wisdom. He is the avenger of

offended morals—the minister of the laws—the instrument and moderator of the executive power. He is the eye of Themis—he is the eagle that carries its lightning—the hand that directs its course upon the mighty oppressor—the prevaricating judge upon the deceitful and criminal journalist, and impious author. His heart is to be opened to all complaints—the sacred asylum of every one groaning under oppression and injustice. That great officer of the crown, acting under the king, is made by letters patent. It is his place to exhibit information, prosecute for the crown, in matters criminal, to file bills in the exchequer for any thing concerning the king's inheritance and profits; and others may bring bills against the king's attorney. His proper place in court, upon criminal cases, is under the judges, on the left hand of the clerk of the crown, but it is only upon solemn and extraordinary occasions; for usually he does not sit there, but within the bar in the face of the court. (1).

Of the Laws of Scotland.

Scotland, except during the temporary conquest by Edward I. King of England, remained independent till the death of Queen Elizabeth, in 1602, when James VI. of Scotland, succeeding to the throne of England, as great grand son of Henry VII. became sovereign of both kingdoms.

The common law of Scotland seems to have had the same origin as the common law of England. Of those laws two treatises are extant; the one is entitled a treatise concerning the laws and customs of England, and begins with the words *Regiam Potestatem*, written by Ranulph de Glanvil, chief justiciary of England, to Henry II.; the other is on the laws of Scotland, and is entitled *Regiam Majestatem*. The many points of resemblance put it beyond all doubt that the one was copied from the other, but to which the merit of originality is to be ascribed has been a matter of dispute. It is clear, however, that under the reigns of Henry II. King of England, and David, King of Scotland, the laws of the two countries were about the same. But since, they have much varied.

The civil or Roman law, is the basis of the Scotch jurisprudence, and the written law of the land. How far back statutes have been enacted in Scotland cannot be ascertained, part of the public records of that country having been carried into England by Edward I. and the rest by Oliver Cromwell. The oldest statutes extant are contained in Sir John Keene's collection, published under the title of Index to the Unprinted Acts of 1607, No. 21. (2).

A union of both parliaments had been long desired, but prevented by incessant difficulties, which were at last overcome, and the work effected in the sixth year of Queen Ann, 1707. Twenty-five articles of union were agreed to by the parliaments of both nations, the purport of the most remarkable of these articles are as follows:

1st Art. On the first of May, 1707, and for ever after, the kingdom of England and Scotland shall be united into one kingdom, by the name of Great Britain.

(1) Jacob's law Dictionary V. Attorney General.

(2) Erskine's Institutes, Book 1. Tit. I. page 10; and Crabb's Hist. English law, chap. 6. under Henry II.

2d Art. The succession to the monarchy of Great Britain shall be the same as was before settled with regard to that of England.

3d Art. The United Kingdom shall be represented by one parliament.

4th Art. There shall be a communication of all rights and privileges between the subjects of both kingdoms, except where it is otherwise agreed.

17th Art. The standards of the coin, and of weights and measures, shall be reduced to those of England, throughout the United Kingdom.

18th Art. The laws relating to trade and customs, and the excise, shall be the same in Scotland as in England.

The laws of Scotland, at this time, consist: first, of the feudal and common law, contained in the *Regiam Majestatem*, coupled with the civil law; second, of the statutes passed by the Scotch parliament before its union with that of England; third, of the statutes passed in reference to Scotland by the British parliament since that period; fourth, of the acts and decisions of the supreme court of Scotland, called the sederunt of the session; and, fifth, of the decisions of the House of Lords on appeal from the session.

Of the Laws of Ireland.

Ireland, that sister island of Great Britain, and now an important member of the British empire, is said not to have been conquered by the Romans, but to have been known to the Greeks, more than five hundred years before Christ, under the name of Juverna. *The Phœnician Hamilco, in his Journal of Discovery of the Tin Islands, speaks of the sacred isle of Juverna, which lay near the isle of the Albions, the Erin of the Hibernians:* and was noticed by Cæsar in his Commentaries.—Henry II. King of England, took possession of the country near Dublin, under the title of Dominus Hiberniæ. The whole island was subjugated under James I.; and Henry VIII. styled himself King of Ireland. Since the reign of Henry II., the laws of England were deemed to be the fundamental laws of Ireland.

At the time of the conquest by Henry II., the Irish were governed by what they called the Brehon law—so styled from the Irish name for judges, who were denominated Brehons. King John, in the 12th year of his reign, by his letters patent, in right of the dominion of conquest, established that Ireland should be governed by the laws of England.(1) But to this ordinance many of the Irish were averse to conform, and still stuck to their Brehon law; so that both Henry III. and Edward I. were obliged to renew the injunction; and at length, in a parliament holden at Kilkenny (40 Edw. III.) under Lionel Duke of Clarence, the then Lord Lieutenant of Ireland, the Brehon law was formally abolished.

As Ireland was a distinct dominion, and had parliaments of its own, it is to be observed, that though the immemorial customs and common law of England were made the rule of justice in Ireland also, yet no acts of the English parliaments, since the 12th of King John, extended into that kingdom; unless it were specially named or included under general words, such as—within any of the king's dominions.

(1) Blackstone, vol. I, page 100, § 100.

The following rule—laid down for Ireland—may be also applied to Canada :

The general run of the laws enacted by the superior state, are supposed to be calculated for its own internal government, and not to extend to its distant dependant countries, which, bearing no part in the legislature, are not therefore in its ordinary and daily contemplation. But when its sovereign legislative power sees it necessary to extend its care to any other subordinate dominions, and mentions them expressly by name, or includes them under general words, there can be no doubt but then they are bound by its laws.(1)

The original method of passing statutes in Ireland was nearly the same as in England, the chief governor holding parliaments at his pleasure, which enacted such laws as they thought proper. But an ill use being made of this liberty, particularly by Lord Gormanstown, deputy lieutenant in the reign of Edward IV., a set of statutes were there enacted, in the 10th Henry VII., Sir Edward Poyning being then lord deputy, whence they are called Poyning's laws; one of which, in order to restrain the power, as well of the deputy as of the Irish parliament, provides, that before any parliament be summoned or holden, the chief governor and council of Ireland shall certify to the king, under the great seal of Ireland, the consideration and causes thereof, and the articles of the acts proposed to be passed therein. These laws in particular could not be repealed or suspended, unless the bill for that purpose, before it be certified to England, be approved by both houses.

The parliament of Ireland continued to make laws under these and other restrictions, until the 1st of January, 1801, when the two parliaments were united and became one parliament, styled the united parliament of the United Kingdom of Great Britain and Ireland, and its statutes, imperial statutes.(2)

(1) Blackstone, vol. 1, page 100, § 101.

(2) See Blackstone, vol. 1, page 101, § 102; Irish Statute, 11 Edw. Stat. 3; the Proceedings of the Irish Parliament, published by Lord Mountmorres, vol. 1, page 53; see also, Blackstone's Commentaries, vol. 1, page 104, and following, containing the articles of the union.

CHAPTER I.

ORIGIN OF THINGS—CONFLICTING DOCTRINES.

SECTION I.—PAGANISM.

I. Uncertainty of Profane History before Homer. II. Homer, his Illiad and Odyssey first mention of political institutions amongst men. III. Hæsioid, his Theogony first Theological Books of Paganism. IV. The principal events and heroes taken from the Mosaic History. V. A few parallels, (1st, Chaos; 2d, Deluge; 3d, Noah; 4th, Deucalion; 5th, Noah and Saturn; 6th, Moses and Bacchus; 7th, Canaan and Mercury; 8th, Abraham and Athamas, Isaac and Phrixus, &c. &c.) VI. Of the Books of the Egyptians. VII. Of the Sacred Books of the Romans. VIII. Of the Sibylline Books.

SECTION II.—Doctrines of the modern Philosophers.

SECTION III.—Judaism and the Books of Moses.

I.—Uncertainty of Profane History before Homer.

BEYOND a certain epoch, nothing is to be found in profane history but a few and doubtful lights that glimmer in the mythological fictions of antiquity.

II.—Homer, his Illiad and Odyssey.

Homer has fixed that epoch by two immortal monuments of his genius—the Illiad and the Odyssey; in which are found the first credible mention of the existence of political institutions amongst men, also the geographical knowledge and the extravagance of popular opinion in his time.(1)

According to the common belief, the earth had the form of a disk or circular plain, surrounded on all sides by river ocean, divided by the Euxine, the Ægean, and the Mediterranean seas into two parts.

Upon the circumference of this circle rested the solid vault of the firmament, on which rolled the sun and the stars, in chariots borne by the clouds; the sun sinking into repose every night in the Western Ocean,(2) in which he was received in a vessel of gold, fabricated by Vulcan, which conveyed him rapidly by the north towards the east, which he reached in time to recommence his daily journey.(3)

A more extravagant solution cannot be imagined; yet it seems to have taken

(1) Plutarch's Life of Homer. A. M. 3104; B. C. 900.

(2) To an inhabitant of the coast of Asia Minor, or the Grecian Archipelago, the sun appeared to rise from the Eastern Ocean.

(3) Odyssey, c. XI. v. 14, 156, 157, XII. 1; Illiad, XV. v. 696, c. f. XX. v. 191. 195; Goguet de l'origine des loix, des arts et des sciences chez les anciens peuples, vol 1, page 37.

firm hold of popular belief at the time, and to have maintained itself among superficial inquirers long after the researches of the learned had established beyond a doubt the spherical form of the earth. Even Tacitus,(1) who in regard to moral and political subjects cannot be taxed with credulity, seems to have concurred in the belief ascribed to other learned men of his time, that the chariot of the sun was nightly heard, and the form of his horses and the rays of his head were seen as he drove through the waves of the Northern Ocean, to his palace in the east. It was also believed, that beyond a mysterious girdle which bound the earth upon pillars, of which Atlas was the guardian, (it is not said where they rested), extended indefinitely the dominions of Chaos, a gulf where all the elements of Heaven and Tartarus, of the earth and of the sea, were jumbled together, and which even the gods themselves regarded with fear; and that at the extremity of the west, of the north, and of the east, was placed an imaginary people, called the Cymmeriens, who dwelt in perpetual darkness. It is from their dismal abodes that Homer drew his images of Hell and Pluto.(2)

III.—Hésiod's Theology of Paganism.

About the same time Hésiod, another Greek poet, gave his Theogony or the Genealogy of the Gods, the first book wrote on the theology of the heathens, as fabulous and as extravagant as Homer's description of the Firmament,(3) which was completed by Ovid, a Latin poet,(4) in a poem called the Metamorphoses, in which he collected all the fictions and fables contained in Homer's and Hésiod's poems, embellished by the pompous lies the Phœnecians had invented to deter other nations from following them in their commercial and colonizing enterprises. It is the most complete collection on that subject, but, like his models, without date, and supported by no authorities.

IV.—Origin of the Fables.

These fables owed their origin to the ignorance and credulity of men, who, having lost the knowledge of the Supreme Being, turned their thoughts and their vows towards material objects which they deified. Astonished at the constant and admirable course of the sun and the stars, they imagined that they were to dread their influence, and that they ought to pacify them when they appeared to be irritated; thence their worship to them, particularly to the sun.

Afterwards vanity placed among the gods, men whose exploits had made formidable. The mighty encouraged popular opinions which facilitated their enterprises. Romulus found it advantageous to be reputed son of Mars; his successor, Numa Pompilius, to give credit to his laws, feigned to have private conversations with the nymph Egeria; Alexander allowed the credulous to believe

(1) Tacitus Germania, ch. 45.

(2) Odyssey XI. 14, 19; Bannier sur les Cymmeriens, Memoires de l'Académie des Inscriptions XIX, 577; Maltebrun, Histoire de la Géographie, p. 13, 14.

(3) Plutarch's life of Hésiod. The time Hésiod lived is not ascertained; Bossuet, in his Universal History, places the time of his existence thirty years before Homer, others, particularly Sir William Drummond, Origines B. 4, ch. 2, one hundred years after.

(4) Thirty years B. C.

that Jupiter was his father; Minos made the Cretans believe that he had had nine years' private conversation with Jupiter, from whom he had received their laws; Lycurgus published that he had received those of Sparta from Apollo; Solon, those of Athens from Minerva. Meanwhile, those legislators had taken the basis of their laws from those given to the Egyptians by Mercury the Second, the adviser and afterwards the successor of their king, Isis, fifty years after the Hebrews had left Egypt, partly modelled on their laws, traditions, and customs.(1)

The ancients speak of that Mercury as one of the greatest men of antiquity; they surnamed him Trimegist, (three times great). He applied himself, and that too with success, to cause the laws, the arts, and the sciences to flourish in Egypt. He was born in Arcadia, and was deified.(2)

By the doctrine promulgated by the Greek poets, all the gods were not equally respectable; some of them held the first rank, and were of the first order, as Jupiter and his wife, the sovereigns of Heaven; Pluto and Proserpine, the god and goddess of hell; Neptune, the master of the seas, &c. Others were of an inferior order: demons or spirits, of which the air was full, disposed by degrees, who received men's sacrifices, gave oracles, and were watching for their safety.(3) The same doctrine was found existing among all the savage tribes of Canada, when discovered by Cartier.(4)

These fables seem to have had their origin with the Assyrians and Egyptians, who communicated their idolatry to the Phœnecians, who promulgated it in all the places where they carried their commerce. The Egyptians and the Greeks transmitted it to the Romans, who established it with their power to the extremities of the world.

The history of the principal events and of the deified men of paganism have evidently been copied from the Books of Moses, but disfigured by the fables and the fiction of the Greek poets. A few parallels will satisfy as to the truth of this assertion of Grotius.(5)

The first Books of Moses were published the year of the world 2542; before Christ, 1462; before Hésiod, 662.

Hésiod gave his Theogony the year of the world 3204; before Christ, 800; after Moses, 662. A few parallels:

1. *Chaos.*

Moses says—The earth was void and empty, and darkness was upon the face of the deep, and the spirit of God moved over the face of the waters.(6)

Hésiod says—Beyond the mysterious girdle which binds the earth upon pillars, of which Atlas is the guardian, extended indefinitely the domain of Chaos.

(1) Bossuet, *Discours sur l'Histoire Universelle*, 3ème Epoque. Terrasson, *ibid*, part 1, § 1.

(2) Goguet de l'Origine des Loix, des Arts, et des Sciences chez les anciens peuples; Terrasson, *Histoire de la Jurisprudence Romaine*, partie 1, § 1, page 7.

(3) Hésiod's Theogony.

(4) Lafitteau, *Comparaison des Mœurs des Sauvages de l'Amérique, avec les mœurs des anciens peuples*.

(5) Grotius de Veritate Religionis Christianæ.

(6) Genesis, ch. 1, v. 2.

2. *Deluge.*

Moses says—And God seeing that the wickedness of man was great on the earth,(1) said, I will destroy man ;(2) but Noah, being a just man, found grace before the Lord.(3) God said unto him, Make thee an ark, for I will bring a great flood upon the earth to destroy all flesh ;(4) and the sources of the abyss were opened, waters prevailed beyond measure, all the high mountains under the whole heaven were covered.(5)

4. *Deucalion.*

Hésiod—And Jupiter seeing that the wickedness of man was increasing every day, resolved to bury the human race under water, and caused torrents to fall from every part of the heavens, the earth was covered with water, except Mount Per-nassus. The piety of Deucalion and of Pyrrha his wife caused Jupiter to save them.

Moses—And God remembered Noah(6) and brought a wind upon the earth, and the waters were abated, the Ark rested on the mountains of Arrarat, in Armenia.(7) Noah went out, he, his three sons, his wife, and the wives of his sons,(8) and God said unto them, Increase and multiply, and fill the earth.(9)

Hésiod—But when Deucalion and his wife found that they were left alone upon the earth, they became alarmed about the re-peopling of the world. The oracle of Themis informed them that, by throwing the bones of their grandmother behind them, that the earth would be re-peopled. The answer was at first found rather obscure ; but at last they understood that the earth was their grandmother, and that the stones were her bones : they obeyed—the stones thrown by Deucalion were turned into men, and those thrown by Pyrrha became women. Thus, according to Hésiod, was the earth re-peopled.

5. *Noah and Saturn.*

Moses—Noah had three sons, with whom he saved himself from the flood—Shem, Ham, and Japhet.(10)

Hésiod—Saturn devoured all his sons except three, Jupiter, Neptune, and Pluto. Noah cultivated the grape. Saturn planted the grape.

6. *Moses and Bacchus.*

Moses was born in Egypt, was abandoned upon the Nile, remained on Mount Sinai enveloped in flames and lightning, forty days, crossed the Red Sea with his nation.

Bacchus was born in Egypt, was surrounded by the thunders of Jupiter, was

(1) Genesis, ch. 6 v. 5.

(2) Ibid, ch. 6 v. 7.

(3) Ibid, ch. 6 v. 8.

(4) Ibid, ch. 6 v. 17.

(5) Ibid, ch. 6 v. 7.

(6) Ibid, ch. 7 v. 19 and 20.

(7) Ibid, ch. 7 v. 9.

(8) Ibid, ch. 8 v. 4.

(9) Ibid, ch. 8 v. 1.

(10) Ibid, ch. 9 v. 1.

found exposed on a river, crossed the Red Sea with an army of men, women, and children.

The name of Moses signifies saved from the water.

Bacchus was surnamed Mises, which signifies the same thing.(1)

7. *Canaan and Mercury.*

Canaan was the servant of his brothers. Mercury was the servant and messenger of the gods.

It was from the Cananeans that the Phœnecians obtained their knowledge.

Mercury was the god of eloquence and fine arts.

8. *Abraham and Althamas, Isaac and Phrixus.*

Abraham was the great-grand-son of Noah—the father of Isaac, whose name signifies the son of joy.

Athamas was the son of Eolus, grand-son of Deucalion, and father of Phrixus whose name signifies son of joy—almost all the mythology presents thus disfigured the Mosaic history.

VI.—*Of the Books of the Egyptians.*

The Egyptians pretended to have had books which they called divine. If they existed, they have been lost, for there is no trace of them in history.

VII.—*Sacred Books of the Romans.*

The sacred books of the Romans, wherein Numa Pompilius had written the mysteries of their religion, were burned as impious by order of the senate.

VIII.—*Of the Sibylline Books.*

These same Romans suffered the Sibylline books, which they pretended to contain the decrees of their gods concerning their empire, to perish.(2)

Thus no positive information can be obtained of the origin of the religious institutions of Paganism, but as is found scattered in the pages of history.

Idolatry, which appears to us weakness and extravagance in the extreme, still kept firm hold at Rome, more than three hundred years after the death of Christ.

So great a subversion of right reason sufficiently demonstrates how much the first principles were tainted.

The world had grown old in idolatry, and, infatuated by its idols, was become deaf to the voice of nature which cried aloud against them.

All the senses, all the passions, all interests fought for idolatry—when Saint Paul spoke to Felix, the governor of Judea, of righteousness, temperance, and a judgment to come, he trembled and dismissed him from his presence,(3) and soon after caused Paul to be arrested, upon frivolous accusations of some Jews, and kept him two years in prison.(4)

(1) Exodc. ch. 2 from vers 1. to v. 10. and ch. 3. v. 2.

(2) Bossuet Discours sur l'Histoire Universelle, 2d partie, p. 130 ; Tit. Liv. lib. 40, c. 29.

(3) Acts of the Apostles, c. 24, v. 25.

(4) It is almost beyond a doubt that he crossed the Mediterranean in the same vessel with the high-minded soldier and celebrated Jewish historian, Josephus, and that it is by the good offices of this extraordinary man, that St. Paul obtained the rare and unexpected privilege of dwelling in a house of his own at Rome, for two years. [See the Scottish Christian Herald, 26th Oct. 1839.—Doctor Jamieson.]

When Paul was brought before Festus, the successor of Felix, he appealed to Cæsar, at Rome.

In the mean time, by the preaching of the Apostles, idolatry was getting into discredit; but interest, that powerful spring which is the soul of all human affairs, got in motion. The silver-smiths of Ephesus, who got their living by making small silver temples of Diana, assembled, and the leading one among them represented to the others that not only their gain was in danger, and their fortunes at stake, but that also the temple of the great goddess Diana would be despised, and that the majesty of her whom all Asia and the world adored would be destroyed. Interest is powerful and bold when it can conceal itself under the cloak of religion. There needed no more to stir up the workmen; they sallied forth with one accord, like so many madmen, crying, Great is the Diana of the Ephesians! and dragged Saint Paul and his companions to the theatre where the whole city was tumultuously assembled. But, fearing that greater disorder should happen in the uproar, the magistrates rescued them.(1)

To the interest of private persons was linked the interests of the priests, who were about to fall with their gods, and the interests of the cities, which false religions rendered illustrious; but a greater interest moved a greater engine, and caused the Roman senate, the Roman people, and the Roman emperors to be put in action. The Roman polity thought itself attacked where its gods were injured.—Rome boasted of being a holy city from her foundation, consecrated at her origin by divine auspices, and dedicated by her founder to the god of war. She thought she owed her victories to her religion, and thereby had overcome both nations and their gods. So that the Roman gods must have been masters of other gods, as the Romans were masters of other men. When Rome subdued Judea, she reckoned the God of the Jews amongst the gods she had vanquished. To pretend to establish his reign was to sap the foundation of the empire; it was to hate the victories and power of the Romans. Thus the Christians, being enemies of the gods, were looked upon as the enemies of the republic.(2)

During these three hundred years, the Christians had to suffer all the cruelties that the rage of their persecutors could invent, notwithstanding, amidst constant seditions and civil wars in the state, and conspiracies against the persons of the emperors, not a Christian, good or bad, ever joined.(3) So much veneration did the law of the Gospel, inspired for public authorities; so deep was the impression made on the mind by this maxim of Christ: "render unto Cæsar what belongs to Cæsar."(4)

At last the Cross of Jesus Christ took the place of the Roman Eagle on the Roman capitol; and idolatry, which the Romans had carried to the extremities of the world, with their conquests, vanished before, and gave its place to the Christian religion.

(1) Acts XIX. 27.

(2) Cicero, *Orat. Pro Flad. Orat. Symm. ad Imper. Varr. Theod. Arc. Zozim Hist. lib. 2, 4, &c.*

(3) Tertulien *Apog.* 35, 36; Bossuet *Hist. Universelle*, vol. 2, page 108.

(4) Matthew XXII. 21; Bossuet, *ibid.*

SECTION II.

Doctrines of the Modern Philosophers.

But another and lasting persecution was to follow. Men of a haughty character, otherwise of superior abilities, under the assumed title of philosophers, declared themselves to be the personal enemies of Christ, and the detractors of his religion; vast and powerful minds, possessed of all the talents that can adorn the human intellect, they wanted none, but that which would have been necessary to protect them against the abuse they made of the others: deficient in the knowledge of nothing; they read every book that could be had, recollected every thing that memory could retain; whose aim in learning was to render doubtful and uncertain all what was known; skilful in turning truth into problems, to astonish and confound reason by reasoning; to throw light and grace upon the most dark and metaphysical subjects; to cover with clouds and darkness the most pure and simple principles; whose delight was to play with human intellect, sometimes by raising from the dust of ages ancient errors, as if they wanted to force the Christian world to adopt the dreams and superstitions of the heathens; sometimes, (and with equal success), by undermining the foundation of new errors, and striking at the root of the principles of society; allowing nothing to appear to be true, because they gave to every thing the colour of truth; constant, decided, and zealous enemies of every religion.(1) Whether they attacked or defended them, they developed only to embroil; they refuted only to render the question more obscure. They gave praise to faith for the purpose of degrading reason; they praised reason to battle with more success against faith. Thus, by various and apparent contrary means, they conducted to the same end,—to know nothing, to believe nothing. Such, in modern times, have been Bayle, J. J. Rousseau, Diderot, Voltaire, Volney, Hume, &c.

They published their doctrines, and said, there is no God. By the work, judge the architect. Consider the globe we inhabit: it is without any proportion or symmetry. Here, it is covered by immense seas; there, its inhabitants starve for want of water. It is a piece of dried up mud, or, what is more probable, some froth which escaped from the sun. The volcanoes, which are scattered over all the earth, demonstrate that the fire which formed them is still under our feet.(2)

Upon this badly levelled scoria, the rivers run without any regular course; the islands present the remnants of continents that once existed, but were destroyed by the seas, which still continue their work of destruction; and the ice of the poles and of the high mountains, continually advancing into the plains, will gradually extend the uniformity of an eternal winter upon this globe of confusion, ravaged by wind, fire, and water.

The disorder augments amongst the vegetals, which are nothing more than a fortuitous production of humidity, and dryness, of heat and cold, a mould of the earth: the warmth of the sun makes them rise; the cold of the poles kills them: their

(1) See Diderot's Three Impostors: Moses, Jesus Christ, and Mahomet. It is from that work that Thomas Paine has taken the most striking parts of his Age of Reason.

(2) Buffon, *Histoire de la Théorie de la Terre*, en explication des Systemes de Whiston, Burnett, et Woodward, vol. 1, ch. 1.

sap obeys the same mechanical laws, as liquors in thermometers, or capillary tubes. This badly laid garden offers almost nothing but useless plants, or mortal poisons.

As to the animals, which we know better, because they are brought nearer to us by the same affections and the same wants, they still present greater dissonances. They proceeded from the expansive force of the earth at the beginning, and were formed by the fermented slime of the ocean, and the Nile. The most part of them are without any proportion; some of them have no feet, others have hundreds; and rage and fury desolate all that breathe; and, at the face of heaven, the hawk devours the harmless dove.

But the discord which divides animals is not to be compared to that which agitates men. The difference only of their origin makes them natural enemies. Some of them are white, some black, some red, and some are covered with hair, others with wool; some amongst them are giants, and others dwarfs. They do not proceed from the same stock, but are all equally odious to nature. Nowhere does it feed him of its free will. He is the only sensible being who is obliged to till the earth to subsist; and, as if that barbarous mother was rejecting her child, the insects ravage his seeds—hurricanes, his crops—wild beasts, his flocks—volcanoes and earthquakes, his cities—and the plague, which from time to time goes round the globe, threatens to carry off the whole of the human race at once. He is constantly at war with nature or with his own species. Oppressed in every thing, shape, and form, he is the most miserable animal that ever came to light; every where he is the victim of some tyrant. It is in vain that he should attempt to defend himself—virtue comes and binds him, so that crime may more easily cut his throat. And what is that virtue of which man is taught to boast so much? A combination of his imbecility with the result of his constitution, supported by the captious sophisms of a few deceitful men, who have acquired a supreme power, by preaching humility, and immense wealth, by preaching poverty.

All die with us. We were nothing before we were born; we will be nothing after our death. The hopes of our virtues are of human invention; the instinct of our passions are of divine institution. But there is no God. Who can have made God? For what purpose could he be God? What pleasure could he have in this perpetual circle of birth, miseries, and death?(1)

Jean Jacques Rousseau, one of them noted for his harmonious and enchanting style, and the avowed vanity of discussing, with an equal skill, all sides of moral and philosophical questions, became alarmed at their success, cried to the world: "I have consulted the philosophers—I have read their books—I have examined their opinions: avoid them—avoid those who, under the pretext of enlightening the mind, sow in the heart desolating doctrines, under the haughty pretext that

(1) The refutation of those doctrines are to be found in the following modern celebrated works: Bernardin de St. Pierre; *Etudes de la Nature*, 4th, 5th, 6th, studies, first volume; *Soirées de St. Petersburg ou du Gouvernement Temporel de la Providence*, by Count de Maistre; *Lettres de quelques Juifs Polonais, Portugais, et Allemands, à M. de Voltaire*; *Leçons de la Nature*, par Despreaux; Buffon, *Histoire de l'Homme et de la Théorie de la Terre*, vol. 1 and 2, refuting these doctrines; Fénelon et Racine, *de l'Existence de Dieu*.

they alone are learned, true, and of good faith. They imperiously submit you to their peremptory decisions, and pretend to give, as the true principles of things, the unintelligible systems they have built in their own imagination, thus destroying and trampling upon all which mankind respect; they ravish from the unfortunate the last consolations they have in their miseries, and take from the mighty and rich the only curb they have to bridle their passions; they root out of the heart the remorse of crime and the hopes of virtue. Still they boast of being the benefactors of mankind. Never, say they, truth is injurious to man. I believe that as they do, and that is in my opinion a proof that what they say is not the truth.”(1)

But that cold, mysterious, and *sophistic* facility of the human intellect, had brought on the hour of the incarnation of the material philosophy of the eighteenth century in religious and political institutions, and in morals. These philosophers alone had the *parole*, and crushed other men under the insolent tyranny of their triumph, with the satanic smile of an infernal genius, when he has succeeded to degrade a great nation.(2) Their philosophical maxims had banished the Christian religion from France.

Its legislative power enacted that there was no God.(3) That reason alone was to be worshipped by the French people; a system of atheism, under the name of *Théophilantropie*, was given by the minister of public worship.(4) In the mean time commerce was annihilated; civil war, and its accompaniments of pillage, murder, arson, and rape, together with famine, were raging all over the country. The sword of justice was handled by the hand of crime: calumny was honoured—virtue persecuted—debauchery encouraged—revolutionary armies furrowed the whole soil of France.(5) No nation had ever descended so low in the scale of crime and folly. Robespierre, the bloody leader of that nation, himself, in his turn, became alarmed; and, sensible that no social order could subsist if it be not resting on a religious basis, caused the national convention to pass a declaratory decree, that the French people believed that there was a God, and that the soul was immortal.(6)

SECTION III.

Judaism and the Books of Moses.

For eighteen hundred years, a numerous nation—claiming an existence of thirty-seven centuries—bearing in the features of each of its individuals the national

(1) J. J. Rousseau, *Emile*, vol. 3.

(2) Lamartine, *œuvres complètes*, vol. 1, page 4 et 5.

(3) September, 1792, epoch of the foundation of the republic.

(4) Lareveillère Lepaux, he presided at the installation of the new divinity, represented by the wife of one of the members of the convention, placed in a state of absolute nakedness on one of the altars of the principal church of Paris, receiving the offerings of the nation.

(5) *Histoire Pittoresque de la Convention Nationale et de ses principaux Membres*, par M. L... Conventionel.

(6) The 20th Prairial, 8th of June, 1794, was consecrated as a day of public rejoicings, on account of that decree.

character of its origin—dispersed amongst all nations of the earth—mixing with none—pretending to have received and to carry with it the authentic document wherein repositeth the laws of the Creator, and presenting it to all the world, saying: “This is our code; those laws have been received by our ancestors, who have transmitted them to us; it is by them we have constantly been governed; and, by following the chain of generations, without the want of a single link, we arrive to our prophets and to Moses, by the intermediary of whom, God has prescribed his will to us.”

Yet, those books which the Jews present with pride, as proving that they are a people specially selected by God to preserve the deposit of his laws, contain the history of their crimes, and the sentence of their dispersion and exile, which have now lasted more than eighteen centuries, and of which we ourselves are eye-witnesses.(1)

Not only are the Jews dispersed amongst all nations, but also in every rank of society.(2) In Europe alone there are more than six millions, eight hundred and forty-six thousand Jews. It is upon the faith of their books, that the following sketch of the history of the first ages of the world will be given.(3)

(1) For, saith the Lord, I will sift the house of Israel amongst all nations, as corn is sifted in a sieve—Amos. ch. 9, v. 9. The children of Israel shall sit many days without king, without altar, and without sacrifice—Hosea, ch. 3, v. 4 and 5.

(2) The Jewish family of Rothschild, the London bankers, treats with almost all the sovereigns of Europe, and assists them with its gold. Amongst us, a wealthy Jewish family is the proprietor of one of the most public and useful establishments. And Jews are found almost in every branch of commerce.

(3) This approximation is taken from the census taken by Maltebrun, in 1810; Craberg, in 1813; Hassel, in 1827; and Balbi, in 1826.

CHAPTER II.

EVENTS OF THE FIRST AGE OF THE WORLD.

THIS first epoch presents events both grand and awful:—God creating the heavens and the earth by his word(1)—prescribing his laws to the Universe(2)—establishing matrimonial union; and upon this foundation the society of mankind;(3) the perfection of the power of man over animals, and his right to the possession of the earth.(4)

With this begins Moses, the most ancient of historians, the wisest of legislators, and the most sublime of philosophers. Then he proceeds with the history of man. He represents his innocence, together with his felicity in paradise(5)—the divine command given to our first parents—the fall of Adam and Eve fatal to their posterity, punished in all by a sentence of death(6)—the subdivision of property,(7) jealousy springing from it—Cain showing to the infant world the first tragical action, by killing his brother—the punishment of the fratricide, and his conscience racked with continual terrors—the first city built by this miscreant(8)—the tyranny of passions, and the prodigious malignity of man's heart(9)—the destruction of man decreed at last by a deluge—Noah and his family preserved for the restoration of mankind.(10) This is the sum of what passed in the course of 1656 years, which lasted from the creation.(11)

The tradition of the universal deluge prevails all over the earth. Many circumstances of that event are marked in the annals of ancient nations: the times agree, and every thing answers, as far as can be expected in so remote antiquity.(12) The same tradition was found among the Savage tribes of America.(13)

(1) Genesis, ch. 1, v. 1.

(2) All the first chapter of Genesis.

(3) Genesis, ch. 1, v. 26, 27, 28, 29.

(4) Ibid, ch. 1, v. 26; ch. 2, v. 29.

(5) The memory of this has been preserved in the golden ages of the poets; Bossuet, Discours sur l'Histoire Universelle.

(6) Genesis, ch. 3, v. 19—"Dust thou art, and unto dust shalt thou return."

(7) Ibid, ch. 4, v. 3.

(8) Ibid, ch. 4, v. 14—That city was called Enoch, after the name of his son.

(9) Ibid, ch. 6 and 7.

(10) Ibid, ch. 7, v. 23.

(11) A. M. 1656; B. C. 2348.

(12) Phœn. His. Mnass. Vic. Damase, XCVI. Abyd. de Med. et Assyr. Ap. Joseph. Antiquities, b. 1; Plut. opux.; Bossuet, Discours sur l'Histoire Universelle, première époque.

(13) Lafitau, Mœurs des Sauvages Américains, comparées aux mœurs des premiers temps, vol. 3, 72.

CHAPTER III.

EVENTS OF THE SECOND AGE OF THE WORLD.

NEAR the deluge are to be ranged the decrease of man's life,(1) the alteration of diet,(2) animal flesh substituted to the fruits of the earth, which occasioned men to encounter wild beasts. The first heroes signalized themselves in these wars: thence the invention of arms—some oral precepts delivered to Noah—the confusion of languages(3)—the first distribution of the land among the three sons of Noah.

Family of Japheth.

To Japheth, the Japetus of the Greeks, and the eldest son of Noah, is ascribed the superiority over his brothers, if not in the number of his descendants, in the extent of his possessions. All the Indo-Germanic nations, stretching without interruption from the western extremity of Europe, through the Indian peninsula to the island of Ceylon, are considered as belonging to this common ancestor. The Turkish nations, occupying the elevated countries of Central Asia, also lay claim to the same descent.

To Gomer, the eldest son of Japheth, Josephus ascribes the distinction of having been the ancestor of the Celtic nations. Magog was probably the founder of some of the Scythian nations. Madai is considered to have been the ancestor of the Medes.

The posterity of Javan and Tubal, and Meshech and Tiras, may be traced from Ararat, called Masis by the inhabitants, through Phrygia into Europe. Tubal and Meshech left their names to the Tibareni and Moschi, Armenian tribes, whose early emigrations appear to have extended into Mæsia.

Askenaz, son of Gomar, is thought to be that Ascanius, whose name occurs so frequently in the ancient topography of Phrygia; and in Togarmah even the Turks find the ancestor of the Armenian nation.

Javan was the Ion of the Greeks, the father of the Ionians. In Elishah, his son, we see the origin of Hellas or Elis. The name of Tarshish has been by some supposed to refer to Tarsus in Cilicia. Kittim is said to mean Cyprus; and Doda-

(1) A. M. 1656; B. C. 2348; Bossuet, *Histoire Universelle*, deuxième époque.

(2) A. M. 1657; B. C. 2347; Genesis, ch. 9, v. 3.

(3) A. M. 1657; B. C. 2317; Genesis, ch. 11, v. 9; Bossuet, *Histoire Universelle*, second age, vol. 1, page 10.

nini or Rodanim is understood to apply to the island of Rhodes. The sacred records assert of the descendants of Japheth, "by these were the Isles of the Gentiles divided;" an expression, which probably includes the almost insular regions of Asia Minor, Greece, Italy, and Spain, as well as the isles of the Mediterranean Sea.

Family of Ham.

The descendants of Ham constituted the most civilized and industrious nations of the Mosaic age. The sons of this patriarch were Cush, Mizraim, Phut, and Canaan. The name of Ham is identical with Cham or Chamia, by which Egypt has in all ages been called by its native inhabitants; and Mizr, or Mizraim is the name applied at least to Lower Egypt, by the Hebrews and Arabians.

The land of Phut appears to signify Libya in general, and the name Cush, though sometimes used vaguely, is obviously applied to the southern and eastern parts of Arabia. The names of Seba, Sebtah, Raamah, and Sheba, children and grandchildren of Cush, have long survived in the geography of Arabia.

The posterity of Canaan rivalled the children of Mizraim in the early splendor of arts and civilization. Though the Canaanites, properly speaking, and the Phœnecians were separated from each other by Mount Carmel, yet as the same spirit of industry animated both, they may in a general sense be considered as one people. The Phœnecians possessed the learning of the Egyptians, free from the superstitious reluctance of the latter to venture upon the sea. Their chief cities, Tyre and Sidon, had reached the highest point of commercial opulence, when the first dawn of social polity was only breaking in Greece.

Family of Shem.

The family of Shem comprised the pastoral nations which were spread over the plains between the Euphrates and the shores of the Mediterranean from Ararat to Arabia. The Hebrews themselves were of this stock; and the resemblance of their language to the Aramean or ancient Syrian, and to the Arabic, sufficiently proves the identity in race of what are called the Semitic nations.

Elam founded the kingdom of Elymeis; Ashur, that of Assyria; and Aram, the kingdom of Aramea or Syria.

From Arphaxad were descended the Hebrews, and the various tribes of Arabia; and this close affinity of origin was always manifest in the language, and in the intimate correspondence of the two nations. Some of the names of the children of Shem, as preserved by Moses, are still in use in Arabia as local designations; thus there is still in that country a district called Havilah, and Uzal, the name applied by the sacred historian to Sana, is not yet extinct.(1)

(1) Genesis, ch. 10, contains the genealogy of Shem, Ham, and Japheth, and ascribes to each of their generations their possessions. The 11th chapter, the genealogy of Shem to Abraham.—See Josephus' Jewish Antiquities, ch. 3, pages 14 and 15.

After this first division of mankind, Nimrod, a man of a fierce and violent disposition, in Scripture called a mighty hunter, turned his arms against his fellow creatures, and became the first conqueror. Such is the origin of conquest. He set up the throne of his kingdom at Babylon, on the same spot where the Tower of Babel had been commenced.(2)

About the same time Nineveh was built, and a few kingdoms were established: they were small in those times, Egypt alone containing four principalities—Thebes, Thin, Memphis, and Tanis.(3)

The first laws and the police of the Egyptians were then established, their Pyramids erected, and the first observation of the course of the heavenly bodies made by the Chaldeens.(1)

It is from those spots, always inhabited, that the first arts and sciences have proceeded; but there the knowledge of God, and the memory of the creation, by degrees diminished—ancient traditions were forgotten—fictions and fables succeeding to them—material ideas taking their place—newly fabricated divinities multiplying. That gave rise to the vocation of Abraham.

(1) Genesis, ch. 10, v. 9, 10, 11.

(2) A. M. 1771; B. C. 2233; Bossuet *Histoire Universelle*, première partie, deuxième époque, page 11.

(3) Porphyre ap. b. 2.

CHAPTER IV.

EVENTS OF THE THIRD AGE OF THE WORLD.

Four hundred and twenty-six years (1) after the deluge, Abraham was chosen to be the stock and the father of the believers. God called him in the land of Canaan, where he intended to establish his worship, and to multiply his race without end. To the gift of the land of Canaan to his descendants, God added the more illustrious promise that Christ would issue from his race. (2) The first part of the promise was thus fulfilled: Abraham had from Sarah, his first wife, Isaac, father of the Israelites—Esau, his grand-son, was father of the Idumeans and of the Homerites; from Hagar, Ismael, the father of the Arabian tribes, since known under the names of Arabs, Ethiopians, Saracens, and Moors; from Cethura, his second wife, Madian, and many other children who have formed the nations of the east of Jordan, others to the south of the Dead Sea, and a few in Syria, afterwards dispersed and covering the earth. (3)

After Abraham, Isaac, his son, and Jacob, his grand-son, followed his faith, and imitated the simplicity of his pastoral life. (4)

Second part of the promise: Jacob received from an angel the name of Israel, (5) which caused his children to be called Israelites. From him were born twelve sons, afterwards called patriarchs, fathers of the twelve tribes of the Hebrews; amongst them, Levi, from whom were to proceed the ministers of sacred things, and Judah, from whom with the royal race, Jesus Christ was to issue. (6) Jacob, being on his death-bed, called his children, and addressed each of them separately. When he came to Judah, the fifth, he said: "The sceptre will not be taken from Judah—at all times there will be in his posterity conductors of the nation—until the coming of the one who is to be sent, who is the object of nations. (7)

The Jews, as well as the other nations of the world, were conquered by the Romans, whom none could resist. About forty years before the birth of Christ, the triumvir, Anthony, one of the chiefs at Rome, appointed Herod, who was an Idumean, consequently a stranger to the Jewish nation, governor, and afterwards king

(1) A. M. 2083; B. C. 1921; Bossuet, *Histoire Universelle*, troisième époque.

(2) Heb. VII. 1, 2, 3, and Sex; A. M. 2148; B. C. 1536; Genesis, ch. 12, v. 1, 2, 3; ch. 17, v. 2 and 18; ch. 22, v. 17.

(3) Genesis, ch. 15.

(4) Ibid, ch. 12, v. 1.

(5) Ibid, ch. 33, v. 28; Josephus' *Antiquities*, § 1, page 54.

(6) Ibid, ch. 13, v. 2, and ch. 22, v. 8; Bossuet, *Histoire Universelle*.

(7) Ibid, 49, v. 10.

of the Jews. It is under the reign of that prince that the sceptre was taken from the race of Judah, and that the authority passed into the hands of strangers. Thus, when Pilate, the successor of Herod, offered Jesus Christ to the Jews to judge him, they declared that they were no longer permitted to condemn any one to a capital punishment, *nobis non licet interficere quemquam*.(1)

CHAPTER V.

EVENTS OF THE FOURTH AGE OF THE WORLD.

I. Of the Written Law and of the Laws of Nature. II. Foundation of the Written Law. III. Text of the Decalogue.

I.—Of the Written Law and of the Laws of Nature

THIS epoch is important, because it serves to mark all the time that has passed between Moses and the Christian era. It begins four hundred and thirty years after Abraham,(2) and to distinguish it from the preceding epochs, which are called the time of the laws of nature, when men had no other rules to govern themselves than their reason, and the traditions of their ancestors.

II.—Foundation of the Written Law.

Before establishing his people in the land promised to Abraham and to his posterity, God established the laws under which they were to live : he wrote them with his own hand on two tables, which he gave to Moses on Mount Sinai. They contain the first principles of the worship of God, and the basis, or first rules, of the human society.

III.—Text of the Decalogue.

I am the Lord thy God : thou shalt have no other gods but me.(3)

Thou shalt not make to thyself any graven image : thou shalt not bow down thyself to them.(4)

(1) St. John, ch. 18, v. 31.

(2) A. M. 2573 ; B. C. 1491.

(3) Exodus, ch. 20, v. 2 and 3.

(4) Ibid, ch. 20, v. 5.

- Thou shalt not take the name of the Lord thy God in vain.(1)
 Remember the Sabbath-day and keep it holy.(2)
 Honour thy father and thy mother.
 Thou shalt do no murder.(4)
 Thou shalt not commit adultery.(5)
 Thou shalt not steal.(6)
 Thou shalt not bear false witness against thy neighbour.(7)
 Thou shalt not covet thy neighbour's wife, nor his daughter, nor any thing that is thy neighbour's.(8)
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CHAPTER VI.

EVENTS OF THE FIFTH AGE OF THE WORLD.

- I. Solomon, or the Temple completed. II. His Wisdom and Commerce. III. His Downfall. IV. Rehoboam, and the loss of ten Tribes. V. His Nation falls into servitude. VI. Great events in Western Asia. VII. Athenians. VIII. Egyptians. IX. Phœnecians. X. Progress of History, of the Laws and Religion during this age. XI. History. XII. Coincidence of the Sacred and Profane Histories. XIII. Laws of the Hebrews.*

I.—Solomon, or the Temple completed.

It was about the year of the world 3000, before Christ 1004, that Solomon completed that wonderful edifice. He celebrated the consecration of it with the most extraordinary magnificence and piety.

II.—His Wisdom and Commerce.

That celebrated act was followed by such wise conduct, that the adjacent nations held him in veneration, even the Phœnecians relaxed in his favour their jealous and exclusive system of discovery, colonization, and commerce. They allowed

(1) Genesis, ch. 20, v. 7.
 (2) Ibid, ch. 20, v. 8, 9, 10.
 (3) Ibid, ch. 20, v. 12.
 (4) Ibid, ch. 20, v. 13.
 (5) Ibid, ch. 20, v. 14.
 (6) Ibid, ch. 20, v. 15.
 (7) Exodus, ch. 20, v. 16.
 (8) Ibid, ch. 20, v. 17.

him to establish a correspondence with Hiram, king of Tyre, and to carry on a lucrative traffic beyond the limits of the Arabian Gulf. After a voyage of three years, his fleets, conducted by Phœnician pilots, returned, laden with the richest merchandise. It was the first and last of Hebrew enterprises.(1)

Authors of respectability maintain that his fleets went for gold as far as South America. Christopher Columbus believed that it was the remnants of Solomon's furnaces which he found in the mines of Cibao, the most abundant in gold of the Spanish isles.(2)

III.—*His Downfall.*

Meanwhile, Solomon was abandoning himself to shameful turpitudes: his mind and his head grew weak, and his piety degenerated into idolatry.

IV.—*Rehoboam, and the loss of ten Tribes.*

At his death, the brutal haughtiness of his son, Rehoboam, caused the loss of ten tribes.

V.—*His Nation falls into Servitude.*

The kingdom of Israel rose against the kingdom of Judah: intestine commotions took place: neighbouring powers harassed the Israelites on all sides; their contempt for the arts and sciences, and their hatred of commercial intercourse with strangers, which the genius of Solomon had partly overcome, returned with their former virulence, and at length that devoted race sunk into servitude.(3)

The ten tribes, amongst whom the worship of God had become extinct, were transported to Nineveh, and afterwards dispersed amongst the gentiles.(4)

VI.—*Great events in Western Asia.*

Inachus, the most ancient of all the kings known to the Greeks, lays the kingdom of Argos.(5)

Cecrops, with a colony of Egyptians, lays the foundation of twelve towns in Greece, rather twelve boroughs, of which he composes the beginning of the kingdom of Athens.(6)

A short time after, Hellen, son of Deucalion, reigns in Thessalia, and gives his name to Greece. This people, who had been called Greeks since that period, always took the name of Hellenists, although the Latins retained to them their ancient name of Greeks(7)

(1) Edinburgh Historical and Geographical Atlas, page 4.

(2) Dehorn, Mark Paul de Venise, Vatable, Robert Etienne; see Charlevoix's Journal, Voyage in America, page 33; see, also, the beginning of the second volume of this work, of the peopling of America.

(3) Bossuet, Histoire Universelle, sixth epoch, part I, pages 24 and 25.

(4) Bossuet, Discours sur l'Histoire Universelle, première partie, les époques.

(5) A. M. 2148; B. C. 1856.

(6) A. M. 2148; B. C. 1556.

(7) A. M. 2173; B. C. 1531.

Cadmus, son of Agenor, transfers a colony of Phœnicians in Greece, and lays the foundation of the city of Thebes in Beothia. The gods adored in Syria and Phœnecia were by him brought into Greece.(1)

Danaus, an Egyptian, proclaims himself king of Argos, and dispossesseth the ancient kings descending from Inachus.(2)

Pelops, a Phrygian, son of Tantalus, king of Lydia, reigns in the Peloponnesus. It is from him that celebrated spot received its name.(3)

Ninus, son of Bel, or Belus, establishes the first empire of the Assyrians, and the seat of his government at Nineveh. He introduced in the world that species of idolatry which had for its object the worship of man, by causing a statue to be erected in honour of his father, and by compelling his subjects to adore it.(4)

Auri, king of Israel, builds Samaria.

Didon, queen of Tyre, augments Carthage, from which her subjects could trade with advantage, and herself could aspire to the empire of the seas.

Thesée, king of Athens, unites into one city Cecrops' twelve towns, and gives a better form to the government of the Athenians.(5)

Semiramis, widow of Ninus, and tutrix to Ninias, her son, augments the Assyrian empire by her conquests.

The celebrated city of Troy, which had been taken by the Greeks under Laomedon, its third king, is reduced to ashes again by the Greeks under Priam, after a siege of ten years.(6)

VII.—*Athenians.*

Codrus, king of Athens, devotes himself to save his nation, and by his death procures a signal victory for his people; but his two sons quarrel about the possession of his kingdom. The Athenians abolish royalty, and declare Jupiter to be the only sovereign of Athens. They appoint perpetual presidents, under the name of Archons, responsible for their administration to the people.(7) Then the Athenians cover all that part of Asia Minor with Greek cities.(8)

VIII.—*Egyptians.*

During that time the kings of Egypt had become very powerful. The four kingdoms of Thebes, Thine, Memphis, and Tanis, had been united into one, under the name of Thebes.(9)

Extraordinary events had taken place in the east of Asia and the rest of the world. The descendants of Noah had been dispersed in the Plains of Shinar, about 644 years after the deluge, and had left no trace of the course they had fol-

(1) A. M. 2473; B. C. 1531.

(2) A. M. 2552; B. C. 1452.

(3) A. M. 2682; B. C. 1352.

(4) Herodotus, lib. 1 ch. 26; Genesis X. v. 11; A. M. 2737; B. C. 1267; Bossuet, *Histoire Universelle*, vol. 1, page 21.

(5) *Ibid.*

(6) A. M. 2820; B. C. 1184.

(7) A. M. 2909; B. C. 1095.

(8) A. M. 2949; B. C. 1055.

(9) A. M. 3033; B. C. 971.

lowed. The Books of Moses alone contained the information that they had divided between them the earth and its islands, according to their languages, their families, and their nations.(1)

The Egyptians ascertained the fact, their celebrated king, Sesostris, fitted out a fleet of four hundred sails, with which he navigated the eastern seas and the Indian Ocean; while, with a powerful army, he marched through Syria, Persia, and India, as far as the sea that separates China from Japan; traversed Scythia, as far as the Tanais; penetrated into Europe, and in several distant countries in the east and the north; planted colonies on the shores of the Euxine or Black Sea, and applied his discoveries to the comforts of life. Herodotus found in Asia Minor, from one sea to the other, monuments of his victories, bearing the pompous inscription of Sesostris, "Lord of lords and king of kings."

The difficulty of obtaining provisions prevented him from entering further into Europe. He returned, after an absence of nine years, loaded with the spoils of his enemies: some of whom had bravely defended themselves, others had yielded without resistance. He erected one hundred temples, by way of thanksgiving, to the titular gods of the cities he had conquered, noting on these monuments the nations who had defended their liberties.

But the history of nations is like that of men: a series of successes and disasters, of elevations and humiliations. The fortunate times of the Egyptians were at an end; their day of adversity came on; they suffered the most cruel and continued persecution from the Persians; were humbled by the Greeks and Romans; and, groaning under the oppressive yoke of foreigners, the spirit and energy of the nation vanished away. They lost their ships and their mariners, and at last their independence; but their science, their renown, and their pyramids, still gloriously subsist.(2)

IX.—*Phœnecians.*

Although, in naval science and commercial enterprise, the Egyptians were greatly surpassed by the Phœnecians. Being established on the barren coast of Syria, the sterility of their country, with the advantage of a maritime position, naturally led the Phœnecians to embark in commerce. To this, as their only source of opulence and power, they applied themselves, with unremitting assiduity and astonishing success. They frequented all the ports of the Mediterranean; visited the western coast of Spain and Africa, where they established several colonies; and extended their voyages to Britain, whence they imported tin.(3)

From the harbours of the Red Sea, their fleets sailed to collect the rich merchandise of the East, which they afterwards exchanged for the less coveted, but more useful productions of the West. Tyre and Sidon, their principal cities, became the emporia of the world, the markets of Asia, Egypt, and Greece.

(1) Genesis, ch. 10, v. 5 and 32.

(2) See the Edinburgh Geographical and Historical Atlas, from page 1 to 5. The most important authorities alluded to in the text, are Wood, on the genius of Homer; Le Chevalier, *Voyage de la Troade*; Maltebrun, *Précis de la Géographie Universelle*.

(3) See Lingard's *History of England*, vol. 1, page 14.

The caravans of Arabia Felix brought thither the precious stones, the spices, and the stuffs of India; silver, tin, lead, and other metals from Asia Minor, were transported by the ships of Tarshish. While for the productions of these countries, Egypt exchanged its fine linens; Damascus, its wool; Palestine, its corn, its vines, and its oil. In short, by their skill, their industry, and their enterprise, the Phœnecians had monopolized the commerce of the world, and established a beneficial intercourse in the most remote regions of the globe. They founded Utica, Carthage, Cadiz, and other colonies; but employed every means, no matter which, to prevent other nations from following them in their footsteps, or interfering with their commerce. With this view, they caused every foreign navigator, who crossed a certain imaginary line, to be thrown into the sea. They are presumed to have been either the authors or abettors of those pompous lies which adorned the fictions of the poets, served to enhance the glory of their discoveries, and, what was of more importance, to increase the price of their merchandise. They cunningly placed the accumulation of their lying wonders at the extremity of the then known world: in the island of Sicily, on the continent of Italy, within the straits of Messina, where the credulous believed that monsters and prodigies were to be met with, as Cyclops, Antropophagous, the enchantments of Circé, the monsters of Scylla, the dreadful whirlpool of Charybdis, together with floating rocks, the eternal night of the Cymmeriens, &c. &c., the whole singularly and well calculated to work on the fears, and consequently to discourage the enterprise of an ignorant, superstitious, and credulous age.

X.—Progress of History, of the Laws and Religion, during this age.

Following the march of these great events, history was becoming more perfect, positive laws more constant; but the world was falling under a universal idolatry. The Jews alone had preserved the idea of a Creator, and even they were allowing superstitious practices to mix with their primitive worship.

XI.—History.

Moses had given his first five books, containing the history of the first ages of the world, of his nation, and of the notions entertained by the Egyptians, the Phœnecians, the Arabs, and other tribes of Western Asia, and the relative position of other adjacent countries.

Ezra, doctor of the Judaic law, was putting the sacred books into order, accurately revised, and collected the ancient memoirs of his nation, of which he composed the two books of the Paralipomenes, or Chronicles, to which he added the history of his own time, which was finished by Nehemiah, governor of the Jews newly re-established in Judea. Their books conclude that long history begun by Moses, and uninterruptedly continued by succeeding authors, to the re-building of Jerusalem. The rest of the sacred history is not written in the same order.

XII.—Coincidence of the Sacred and Profane Histories.

Whilst Ezra and Nehemiah were forming the last part of that great work, Herodotus, by profane authors called the father of history, began to write. Thus the

40 PARTICULAR LAWS AND CUSTOMS OF THE HEBREWS.

last authors of the sacred history coincide with the first authors of the Grecian history, and when it began, that of the Hebrews, to take only from Abraham, included fifteen centuries.(1)

XIII.—Laws of the Hebrews.

By his code, Moses had established the first religious and political institutions amongst men, which have partly been incorporated in the laws of every nation ; regulated the military discipline in his nation ; caused his internal police to be admired ; his external laws respected by the idolatrous nations which were surrounding him ; his forbearing polity maintained peace with those which might have crushed his people ; but to prevent communications, and to discourage these nations from trading with the Jews, he rendered the commerce onerous to strangers ; he permitted usury against them, which he formally prohibited amongst the Jews.

CHAPTER VII.

PARTICULAR LAWS AND CUSTOMS OF THE HEBREWS, AS FOLLOWED BEFORE AND SINCE THEIR DISPERSION.

I. Laws of the Hebrews. II. Of the Rabbis and their Authority. III. Of the Excommunications. IV. Contracts, Writings, Notaries. V. Judges. VI. Marriage. VII. Solemnities of Marriage. VIII. Divorce. IX. Consistory, or Senate, of the Jews. X. Of the Year and Month, Sabbath and Holidays.

I.—Laws of the Hebrews.

THE laws of the Jews are divided into three parts :

The first is the written law, comprising the five books of Moses, composed of six hundred and thirteen precepts, of which two hundred and forty-eight are affirmative and three hundred and sixty-five negative, called *Mizrod de Oraila*, or the commandments of the law. The principal contents of these laws are found in Exodus, the second book of Moses. The 20th chapter contains the decalogue, or ten commandments : the 21st chapter, the laws relative to servants, v. 1 and 2 ;

(1) Bossuet, *Histoire Universelle*, première partie, les époques, page 58 ; Esdras XIII. ; Deut. XXIII. 3 ; Josephus, vol. 2, pages 104, 107, 109.

manslaughter, v. 12 ; stealing of men, v. 16 ; cursers of parents, v. 17 ; assault and battery, v. 17, 18, 19, 20 ; hurting a woman with child, v. 22 ; wounds inflicted by an ox, v. 28 ; leaving a pit uncovered, v. 33. The 22d chapter, laws concerning theft, v. 1 ; damages, v. 5 ; trusts and trespasses, v. 7 ; borrowing, v. 14 ; fornication, v. 16 ; witchcraft, v. 18 ; bestiality, v. 19 ; idolatry, v. 20 ; oppressing of strangers, widows, and orphans, v. 21 ; usury and pledges, v. 25 ; of the respect due to magistrates, v. 28. The 23d chapter, laws concerning slander and false witnesses, v. 1 ; charity towards the brute creation, v. 4.(1)

The second is the oral law, delivered by word of mouth. Such is the name given to the commandments which rabbies and doctors have made on the books of Moses, and to a number of constitutions and rules, named *Mizvou de Rabanan*, or commandments of the doctors. These rules and constitutions have been collected into a large volume, called Talmud.

The third are such as have been authorized by immemorial usage, called *Men-haghim* customs. As these customs have been formed in various places and at different times they vary.

The written law of Moses, and the oral law which was given by the doctors, and transmitted by tradition, are equally received by all the Jews, though dispersed all over the globe.

As long as the Temple of Jerusalem subsisted, the Jews could put nothing of this second law into writing, because it was to be taught orally, and be transmitted by tradition ; but about one hundred and twenty years after the destruction of the temple, Rabbi Judah, by the Jews called *Rabana acados* (our holy master), on account of the sanctity of his life, finding that the dispersion of the Jews caused them to forget that law, he wrote all the sentiments of the doctors, and also the tradition of the rabbies to his time, in a book, called *Misna*, or repetition of the law, which served as a text to the Talmud. That book, on account of its brevity, caused many disputes. Two rabbies at Babylon made commentaries upon the *Misna*, to which they added the sayings of the learned. That collection was called the Talmud of Babylon. A few years before, another rabbi made a similar work, which is called the Talmud of Jerusalem ; but the Talmud of Babylon is preferred, as more ample and intelligible.

II.—Of the Rabbies and their Authority.

The rabbies consider it to be a puerile and shameful vanity to seek the honour of being appointed doctor ; therefore they will not submit themselves to be examined. In some countries, particularly in the East, common fame or renown points out one whose conduct and learning render him fit to be a doctor. He is named *cachem*, or wise man. In other places he receives that title from some of the oldest rabbies, who give him the title of *Caver de Rau* (companion master).

III.—Of the Excommunications.

The sentence of excommunication is pronounced by the rabbies, who curse the excommunicated publicly. After which no Jew can speak to him, neither to

(1) If you see your neighbour's ass laying under his burden, thou shalt surely help him.

42 PARTICULAR LAWS AND CUSTOMS OF THE HEBREWS.

approach him nearer than one toise. He is forbidden the entrance of the synagogue, until he be absolved. But this is only a simple excommunication. There is also an extraordinary one, which is performed with much more solemnity. The synagogue assembles, black torches are lighted, and, at the sound of a trumpet, the excommunication is pronounced, and the people assembled say amen.

IV.—*Contracts, Writings, Notaries.*

All agreements and conventions were admitted to be concluded when the parties had touched the coat or handkerchief of the witnesses. That was considered as an oath to fulfil the agreement; that oath was called *chenian suddar*—(purchase of the stuff.)

As to notaries, all acts, contracts of marriage, wills, even divorces, made in their capacity of writers, in presence of witnesses, were valid.

If it became necessary to make the acts more solemn, they were legalized by three judges, by public authority appointed to that effect.

In order to render witnesses irreproachable, they were to be examined in the presence of the accused, or of the parties.

V.—*Judges.*

The principal rabbies, almost with all the Jews, are the natural judges of all the difficulties that occur amongst them, otherwise the parties agree to submit the decision of their differences to arbitration.

The rabbies judge conformably to what is written in the *Cosen Amispart*, or a collection of judgments given in similar cases, called *Tescivnod*, the most part of which are found in the 21st chapter of Exodus, beginning with these words, "here are the judgments you will propose to them," and in the 22d and 23d Deuteronomy, upon which the judges decide. The decision of criminal cases depends on the law under which they live, the authority of the rabbies extending only to the excommunication of those who have transgressed the religion, or the civil law.

VI.—*Marriage.*

Every Jew is bound to get married, and the rabbies have decided that it ought to be at eighteen years of age; the one who passes twenty-one is supposed to live in sin, because he does not obey the command.

VII.—*Solemnities of Marriage.*

When the parties have agreed upon the conditions of the marriage, a writing is passed between the man and the relatives of the girl; after which the intended husband pays a visit to his future wife, gives her his hand, sometimes a ring; and, on the day appointed, the parties meet at the place agreed on. The couple, standing under a canopy erected for the occasion, which is generally ornamented with tassels, have a square veil, called *taled*, placed over their head. The rabbi of the place, the singer, or reader, of the synagogue, or, failing them, the nearest relative, takes a vase filled with wine, and, after having given thanks to God for having created man and woman, and made a command establishing matrimonial union,

he gives some of the wine to drink to the married couple; then the husband puts a ring on the finger of his wife, in the presence of two witnesses, who generally are rabbies, and says, "Now you are my wife, according to the rites of Moses and of Israel." Then the written instrument is read; the husband binds himself to the *dot*, and confesses to have received it. In former times the husband constituted a dower in favour of his wife; (1) pledged himself to be faithful to her and to maintain her, and he gives the writing to her relatives. After that is done, wine is brought in a brittle vase, a second time, and after having sung six benedictions, the wine is given to the spouses: some of it is thrown on the floor, as a sign of jubilation and merriment; then the husband takes the vase, throws it with all his might on the floor, and breaks it in pieces, to mix with the joys of this world an idea of death.

VIII.—*Divorce.*

Divorce was allowed amongst the Jews; but, to prevent the abuse of such a privilege, the rabbies have established many formalities, which take so much time, and give so much trouble, that frequently before the letters of divorce can be executed, the parties repent, and a reconciliation takes place. These letters are named *Ghett*, and are given to the wife; they are made by a scribe, in the presence of one or more of the learned rabbies, and are written upon ruled parchment, containing neither more nor less than twelve lines, in square letters. These, together with a great number of other trifling circumstances, rendered a divorce so difficult to be obtained, that it was seldom resorted to.

IX.—*Consistory, or Senate, of the Jews.*

The great consistory, or sanhedrim of the Jews, was established by Moses. It was composed of seventy-one ancients of the nation: one of them had the quality of president, or chief. It is that officer that the Jews, to this day, call *Hannase* (the prince). There were also a vice-regent, to whom they gave the title of the father of the consistory; all the other members were called ancients, or senators.

There was nothing more solemn and more imposing in the republic of the Hebrews than this sanhedrim. That tribunal, in their language, could make a *Saieg la Tora* (a hedge to the law), because it had the power to interpret it, as it thought proper for the times and circumstances: basis of the oral law, column of the true doctrine; therefore, those who refused to submit themselves to its decisions, were considered as rebellious subjects, and were excommunicated.

X.—*Of the Year and Month, Sabbath and Holidays.*

The phases of a moon is one month amongst the Jews, and to make their lunar year correspond with our solar year, they have taken the lunar cycle, or a revolution of nineteen years. Of these nineteen years, there are seven of thirteen months each; thus, every two or three years, one is of thirteen months, which is called *Meubar* intercalated. When that happens they count twice the month of

(1) Genesis, ch. 34, v. 12.

44 PARTICULAR LAWS AND CUSTOMS OF THE HEBREWS.

Adar, which is placed between February and March ; then there are two months of the same name, called *Adar* first and *Adar* second, or *Ve Adar*, second *Adar*.

Names of the Months.

Hebrew Names.	Roman Names.
1. Nisan,	March and April
2. Jyar,	April and May.
3. Sivan,	May and June.
4. Tamus,	June and July.
5. Ab,	July and August.
6. Elul,	August and September.
7. Tisri,	September and October.
8. Marhesvan,	October and November.
9. Casleu,	November and December.
10. Tebeth,	December and January.
11. Shebat,	January and February.
12. Adar,	February and March.

Ve Adar, or second *Adar*, intercalated.

Tisri, by which they begin to count their months, corresponds to our month of September.

The Talmudists do not agree on the month the world began : some of them are of opinion that it was in the month of *Nisan*, others in *Tisri*. It is this last computation which is followed.

The Sabbath is kept with the greatest veneration, because the seventh day is the Sabbath of the Lord,(1) instituted immediately after the creation of the world. On this day, according to the full and literal translation of the text, the Jews were to do nothing. As that was impossible, their rabbies have explained and commented on the text, and have determined what was expressly forbidden in thirty-nine articles, of which the principal are, not to plough, sow, thrash grain, make bread, spin, card, tie and untie, build, use the hammer, hunt or fish, write, extinguish lights, carry burthens, &c.

Passover.—The 15th of the month of Nisan they begin the commemoration of their leaving Egypt. That festival lasts eight days. The first night they eat a lamb, and during the eight days, with their other food, bread without leaven. On the eve of that day, it was customary for the first-born of families to fast, in remembrance that during the following night God put to death the first-born of the Egyptians.

Their other principal holidays are Pentecost, the sixth of the month of Sivan, also called the festival of the weeks, *Sciavod*, because it is the end of the seven weeks since the Passover ; also the day of the premises, because it was on that day they made their offerings to God of the first fruits of the earth ; also the festival of harvest, because they then began to cut their grain. The Jews hold, by tradition, that it is on that day that the law was given by God to Moses on Mount

(Josephus, *Judaic Antiquities*, vol. 1, page 15.

Sinai.(1) On that day they profusely ornament their synagogues, their lecturing places, and their houses, with roses and other flowers.

The 10th of Tisri is a day of general fasting, called the fast of pardons.(2) The 15th is the festival of the tents, cabins, or tabernacles, which they call *Succod*, in remembrance that it was in cabins that they dwelt after they left Egypt.

The 25th of Casleu is the festival of *Hanuca*, in remembrance of the victory the Maccabees gained over the Greeks.

The 11th of Adar they celebrate the *Purim*, to commemorate the day Esther saved the people of Israel from the conjuration of Aman.(3)

CHAPTER VIII.

LEGISLATORS AND LAWS OF THE MOST CELEBRATED NATIONS,

FROM THE TIME THE HEBREWS LEFT EGYPT TO THE FOUNDATION
OF THE ROMAN EMPIRE.

I. The two Mercuries, and the Laws of the Egyptians. II. Distribution of Justice. III. Minos, and the Laws of the Cretans. IV. Lycurgus, and the Laws of Sparta. V. Draco and Solon, and the Laws of Athens. VI. Principal Laws of Solon.

I.—The two Mercuries, and the Laws of the Egyptians.

THE Egyptians were the first who modelled their laws on those of Moses. Their first legislators were two Mercuries: the most ancient was known under the name of Theut, who reigned at Thebes; the other was the successor of Mœris, who

(1) Exodus, ch. 19.

(2) Leviticus, ch. 23.

(3) Many of the interesting customs of this wonderful people ought to be noticed here, but the limits of this work will not allow it, such as their notions about dreams, which have passed to all Asiatic, American and Germanic tribes; their houses, of which they always leave some part unfinished in this land of exile; their beds, which they never set east or west, for the respect due to Jerusalem and the temple, which were in that position. The commemoration of their holidays and their customs stand as living proofs that the events marked in their books have really taken place. See a celebrated work, entitled "The Ceremonies and Customs which are this day observed by the Jews," written in the Italian language, in 1637, by Leon de Modene, rabbi of Venice.

reigned some time after the death of Moses. These laws were promulgated about fifty years after the Jews had left Egypt.(1) This prince collected and compiled, in forty-two books, all that regarded the religious civil, and criminal laws.

II.—Distribution of Justice.

Justice was distributed in the three towns of Thebes, Memphis, and Heliopolis, during all the time that Egypt was governed by shepherd kings; but Heliopolis, having shaken off its yoke, Amasis, who was its first king, afterwards introduced new laws, and created a tribunal, composed of thirty magistrates, of which ten were taken in each of the three towns. One of them approached more familiarly the person of the prince. He presided at the councils, having a distinguished dress, and an image of truth, ornamented with diamonds, suspended to his neck by a gold chain. That image represented a woman without eyes. When the president took it, it was the signal that the court had begun its sittings.

The laws of Amasis were contained in eight books, which were placed under the eyes of every one of the magistrates when they held their meetings. Some of these laws were relative to religion; the others contained their civil and criminal laws.

As by the Mosaic code, the wilful murderer suffered death; but the Egyptian laws were more severe in many other respects: the false swearer, the slanderer, the one who would allow a murder to be committed when he could prevent it, were also put to death.

The kings themselves were subject to the laws.

The ancient Egyptians entertained very great ideas of the happiness of a future life. They looked upon the present existence on earth as a passage leading to immortality, and that the tomb was the first step towards a place of real and perpetual happiness. In consequence, they dreaded nothing more than to be deprived of the ordinary sepulture, which was the punishment of a tyrannical administration, or of sinful conduct. At the death, the public prosecutor caused the body to be brought before the people, who were the natural judges of the memory of all, and there to be judged. No considerations could dispense with the law, and a guilty king knew before hand that his remains would never enter these magnificent sepulchres,—the wonders of the world, built by the people for their meritorious princes,—no more than his guilty subject could pretend to the humble tomb of his ancestors.(2)

III.—Minos and the Laws of the Cretans.

The laws of the Cretans are of about the same antiquity as the first laws of the Egyptians.

Minos, the successor of Jupiter Asterius, king of the Cretans, was their first legislator. His laws were not transmitted to posterity, but they were held in great repute. It is maintained by ancient historians, says Terrasson, that, like those

(1) Terrasson, *Histoire de la Jurisprudence Romaine*.

(2) Rollin, *Histoire Ancienne*, vol. 1, from page 58 to page 106.

of the Egyptians, they were modelled upon those of Moses. But Minos did not follow the Hebrew legislator in all his laws. He established the community of meals; he ordered that the children should be brought up and educated together in a public manner: that was not the law of the Hebrews.

Minos gave to the promulgation of his institutions an air of mystery, with the view of impressing on the people a greater respect for them. He published that he had received those laws from Jupiter himself, with whom he pretended to have secret communications every nine years.(1)

IV.—Lycurgus, and the Laws of Sparta.

About seven hundred and twenty years before Christ, Lycurgus succeeded his eldest brother, king of Sparta, and reigned a few months; but as soon as he was informed that his brother's widow had been left with child, he abandoned the crown, became the tutor of his nephew, and governed the kingdom, until he thought that he might with safety leave the authority in the hands of his pupil.

Like Minos, he instituted the public meals, ordered that the children should be brought up and educated, publicly and together, as one family; that they would be considered the children of the state, so that a weak or vicious father should not make of his son a fool or libertine.(2)

He then visited the most distinguished nations, for their politeness and the soundness of their public institutions, to improve those of his own country, particularly Egypt and the Island of Crete, of which the wise severity of the laws pleased his character. He passed through the voluptuous nations of Asia, and found in their frivolous magnificence and luxury a destructive seed of all good institutions.

During his absence, all in Sparta became in a state of confusion, the common results of an ill organized government. The calamities of anarchy were dreaded both by the king and his subjects. They recalled Lycurgus, as the only resource, and invested him with the most unlimited power. He then totally reformed the institutions of his country. He established a senate of twenty-eight members, taken among the most learned, the most wise, and the most virtuous of the country. He invested that senate with an authority equal to that of the king, so as to establish a salutary balance in the public weal, which heretofore was constantly vibrating, either in favour of tyranny or of popular confusion.(3)

He gave to the people the right of assembling, and the power of confirming or rejecting the laws proposed by the king and the senate. Yet a more difficult change was to be performed. All the lands in Sparta were in the possession of a few individuals: he caused them to be equally divided amongst all the families of the commonwealth. To keep the equality of riches, he proscribed the use of gold and silver coins, and gave such a base value to that of iron that no one was tempted to accumulate such a burthensome article.

(1) Terrasson, *Histoire de la Jurisprudence Romaine*, page 16.

(2) Lycurgus instituted public dances: one of them called the dance of ridicules, was found existing amongst the Hurons and Iroquois Indians of Canada. This dance, and its object, are mentioned in the beginning of the second volume of this work.

(3) Plutarch's *Life of Lycurgus*.

Having given all his days for his country, he died for it. Having completed his designs, he called the Spartans together, and made them swear not to change any thing belonging to the laws before he had returned. He left Sparta for Delphi, where he allowed himself to die by starvation, so as to take away from his country all hopes of his return, and thus to render his institutions permanent.

V.—Draco and Solon, and the Laws of Athens.

Antiquity presents two other extraordinary legislators, who imposed their laws, not only on Athens, but even on Rome. The first is Draco.(1) He found Athens in a state of great confusion and sedition. That city, which afterwards became the school of eloquence and politeness, had been governed by chiefs, or kings, who, following no other rule but that of their caprice, had at last been expelled. Intestine wars followed. Draco undertook a general reform. He had to contend both with anarchy and the ferocious character of the people he had to govern. All obstacles vanished before his genius and his determination. He began by establishing, as the foundation of his criminal code, that the least prevarication against the law deserved death: so there were no degrees of punishment: death for all: even the man who used a horse, without the permission of the owner, was put to death as if he had stolen it. The idlers, or those who passed their life without working, received the same punishment—first, because they did not fulfil their duty towards the commonwealth, and, secondly, because idleness is the cradle of debauchery and crime.

He authorized every citizen to kill a murderer, likewise the one who should return from his exile before the time, and the one found in a criminal intercourse with either his wife, his mother, his daughter, or his sister.(2)

Solon.

About six hundred and thirty-nine years before Christ, Solon was born of one of the most ancient families of Athens. His father having diminished his fortune, Solon was obliged to have recourse to commerce, which was in the greatest honour in his time. It served him, particularly in placing him in a situation to travel, and to acquire useful information amongst foreign nations. By that means he obtained a knowledge of the sciences that can form a moral philosopher and a wise politician.

Athens had carried in its bosom for a long time a course of disorder and confusion, by the extreme disproportion of fortune. The rich possessed all: the poor had nothing to resort to but despair. A revolt was at hand, and the liberty of Athens on the brow of a precipice. Solon was the only one who could save the republic. The people invested him with the necessary authority to perform the task: he accepted the mission, and was successful. He begun by eradicating the evil at the root; did what was most useful, and with the least possible injustice.

(1) A. M. 3378; B. C. 626.

(2) Terrasson, *Histoire de la Jurisprudence Romaine*, page

The poor had nothing: the rich had oppressed them with excessive interest, which had partly paid their debts: Solon abolished the rest. The rich were dissatisfied, and the poor clamorous, because Solon had not, like Lycurgus, divided the lands amongst all the families. But Solon was wise, learned, firm, and just, and was satisfied that having pleased no one, he had done justice to all.

He divided the people into four classes, and prescribed the rank each class should hold in the republic. He ordered that the public charges should continue to be held by the most wealthy; and those who supported themselves by their daily labour were invested with the right of confirming or rejecting what had been discussed in the areopagus and in the senate.⁽¹⁾

That right seemed in the beginning to be of little importance, but in time became so, and rendered the people, in fact, the masters of all the affairs of the republic. He augmented the authority of the areopagus; fixed the number of the members of the senate to four hundred, which he caused to be taken from the four classes of the citizens, and then caused his laws to be enacted. The following are among the most remarkable:

VI.—Principal Laws of Solon.

First—The law by which women were forbidden to bring rich dotalions to their husbands, to prevent the sanctity of matrimonial union degenerating into an affair of traffic and interest.

Second—The law which allowed those who had no children, to will their property to strangers.

Third—The law that ordered an equal division of property amongst the children, and precluded in that case the parents from making wills.

Fourth—The law that obliged every citizen to have a trade, and relieved the children from the obligation of maintaining their parents in their old age, if they had neglected their duty in procuring them one.

Fifth—The law that obliged the areopagus to inform itself how every one provided for his subsistence, and intrusted the magistrates with the care of the property of widows and orphans.

Sixth—The law that revived that of Draco against idlers.

Seventh—The law that permitted the killing of the adulterer taken in the act.

Eighth—The law that obliged young men to stand up before the ancients, through respect for their old age.

He made no law against sacrilege, because that crime was not known at Athens, nor against paricide, because nature had so much horror of it that he thought its commission impossible. He was asked if he had made the best laws possible. He answered, "No, but those the most consonant with the circumstances."

When he had completed his laws, he called the Athenians together, and made them swear to observe them for one hundred years, and then he left Athens, and travelled. On his return he had the grief to see Athens once more in a state of confusion and anarchy. Pisistrate, taking advantage of the broils of the people,

(1) That caused the Scythian Anacharsis to say, that at Athens the wise deliberated and that the fools decided.

usurped the sovereign power. When Solon found that he had no hopes of reviving the liberty of his country, he hung his arms in front of his house, and left Athens for Cyprus, where he terminated his honourable life with one of the kings of that island.

Plutarch and Cicero say that in their time many of the laws of Solon were in full force at Rome. They have been incorporated in the laws of the twelve tables of the Romans, and some of them have been transmitted to us with the Roman jurisprudence.

CHAPTER IX.

STATE OF RELIGION, FROM THE DEATH OF SOLOMON TO THE CHRISTIAN ERA.

Rehoboam, and the Idolatry of the ten separated Tribes of Israel.

THE brutal haughtiness of Rehoboam, son of Solomon,(1) made him lose ten tribes, whom Jeroboam turned away from their God and from their king. To prevent their return to the king of Judah, he prohibited going to sacrifice at the Temple of Jerusalem, and set up his golden calves, to which he gave the name of the God of Israel, that the change might seem less strange. The same reason made him retain the law of Moses, which he interpreted in his own way, but caused almost all its polity, as well civil as religious, to be observed, so that the Pentateuch continued always in veneration among the seceding tribes.

Thus was the kingdom of Israel set up against the kingdom of Judah. In that of Israel, impiety and idolatry triumphed: all the earth was idolatrous. Religion, though often overclouded in that of Judah, still kept some footing there.

After the return from the captivity of Babylon, the Jews scattered in divers places of Upper Asia, Asia Minor, in Egypt, in Greece itself, began to shew forth among the Gentiles the name and glory of the God of Israel. The Scriptures, which were one day to be the light of the world, were put into the language most known upon earth (the Chaldaic), and their antiquity acknowledged. The Grecian philosophers became sensible that the world was ruled by a God very different from those whom the vulgar adored, and whom they worshipped themselves with the vulgar.

(1) A. M. 3029; B. C. 975.

The most enlightened and wisest nations, the Chaldeans, Egyptians, Phœnicians, Grecians, and Romans, were the most ignorant and blind in the article of religion. Who would dare to narrate the ceremonies offered to their immortal gods and their impure mysteries ; their laws, their cruelties, their jealousies, their sacrifices of human victims ; crime worshipped, and owned to be necessary to the service of their gods ; the hymns that were sung in their honour ; the paintings that were consecrated in their temples, are incredible. Plato, the gravest of their philosophers, forbids drinking to excess, if it was not in the feasts of Bacchus, and to the honour of that god.(2) Another, after severely lashing all unseemly images, excepts those of the gods, who choose to be honoured by such indecencies.(3) One cannot read without astonishment the honours that were to be paid to Venus, and the prostitutions that were established for her worship. Greece, as polite and wise as it was, had received these abominable mysteries upon pressing emergencies, private persons and public weals, devoted courtesans to Venus ; and Greece did not blush to ascribe her preservation to the prayers they put up to their goddess. Solon, (who could expect from so great a name so great a scandal), erected at Athens a temple to Venus the prostitute, or unchaste love. All Greece was filled with temples consecrated to this goddess, and conjugal love had not one. Yet they detested adultery, both in men and women ; the conjugal tie was sacred among them ; but, when religion was in question, they appeared possessed of a strange spirit, and their natural light forsook them.

Nor did Roman gravity treat religion more seriously : they consecrated to the honour of their gods the impurities of the theatre, and the bloody spectacles of the gladiators, that is, whatever can be imagined most corrupt and most cruel.(3)

It is true, the philosophers had at last confessed that there was another God beside those the vulgar worshipped, but they dared not avow it, one of them excepted : that honourable distinction falls upon Zaleucus, the legislator of the Locriens. In the preamble of his laws, he says :

“Every citizen must be convinced of the existence of a God. It is sufficient to observe the order and harmony of the universe, to be convinced that it cannot have been formed by chance. Every one must master his soul, purify it, and avoid all sins, persuaded that God cannot be well served by the wicked : virtue alone, and a disposition always to do good, can please him. We must try to be just, both in principles and practice : such is the only mode to become dear to the Divinity. Every one must have a greater fear of what would bring him to ignominy than to poverty.

“Let every one have before his eyes the hour of his death, that fatal hour which we all must expect ; the hour wherein the remembrance of our faults will bring remorse, and the vain repentance of not having submitted all our actions to equity. Thence each one ought to conduct himself every moment as if it were his last ; but if an evil spirit invite him to crime, let him throw himself in the arms of vir-

(1) Plato, de leg. VI.

(2) Aristotle, VII. Polit.

(3) Plato, de leg. VI. ; Aristotle, Polit. ; Bevruch, VI. 10, 42, 43 ; Herodotus, I. 1 ; Strabo, 15 ; Athen. I. XIII. ; Bossuet, H. U. vol. 1.

tuous people, who will, by the representations of God's vengeance and his goodness, bring him back to the path of virtue."

Voltaire, from whom this is taken, after having transcribed the whole of this fragment, exclaims, that antiquity has presented nothing superior to these lines, both simple and sublime, free from enthusiasm and of these gigantic figures so much disavowed by sound sense.(1)

Socrates delivered it as a maxim, that every one ought to follow the religion of his country.

Plato, his disciple, who saw Greece and all the countries of the world filled with an absurd and scandalous worship, does nevertheless lay it down as the foundation of his republic, "that men are never to make any change in the religion they find established, and that they must have lost all common sense should they only think of it." Such grave philosophers, and who said such excellent things concerning divine nature, did not dare to oppose the public error, and despaired of being able to conquer it. When Socrates was accused of denying the gods the public adored, he vindicated himself from it as from a crime.(2)

Plato, speaking of the God who had formed the universe, says that it is forbidden to declare him to the people. He protests that he will never speak of God but enigmatically, for fear of exposing so great a truth to ridicule.

Athens, the most polite and most learned of all the Grecian cities, took for atheists those who spoke of intellectual things, and this was one of the reasons for which Socrates was condemned. And yet the Jews themselves who knew God, and who pretended to be the guardians of his laws and religion, began to mingle in religious superstitions unworthy of him. Under the reign of the Asmoneans, and in the time of Jonathan, the sect of the Pharisees arose amongst them.(3) They acquired at first a great reputation, by the purity of their doctrines and the strict observance of the law: their conduct was mild though regular. The rewards and punishment of the future state, which they zealously asserted, gained them much honour. At last ambition entered among them; they assumed an absolute power over the people; set themselves for arbitrators of learning and religion, which they insensibly perverted to superstitious practices subservient to their interests; and the true spirit of the law was in danger of being lost.

To these evils was added a greater: pride and presumption. Being a chosen race, and blessed for two thousand years, they thought themselves of a different species from other men. From this principle, they looked upon the Gentiles with an insupportable disdain. To come from Abraham, seemed to them a distinction which set them naturally above all others; and, puffed up with so noble an extraction, they fancied themselves holy by nature, an error which still prevails amongst them. It was the Pharisees who introduced this opinion, towards the latter times. They multiplied external usages without number, and delivered their notions, however contrary to the laws of God, as so many authentic traditions. Although these sentiments had never passed by a public decree into tenets of the

(1) Preamble of the Laws of Zaleucus—it is the only part which passed to posterity; Voltaire, *Histoire Universelle*.

(2) Xenophon, *Mem. lib. X.*; Plato, *de leg. V.*

(3) *Apol. Soc. Apud. Plato et Xenophon*; Ep. 2 ad. Dionys; Bossuet, *Hist. Univ. Religion*.

synagogue, they insensibly stole in amongst the people, who became disquiet, turbulent, and seditious.

It was hardly sixty years before Jesus Christ, when Hyrcanus and Aristobulus, sons of Alexander Jannæus, fell out about the priesthood, to which the kingdom was annexed. This is the fatal moment wherein history fixes the first cause of the destruction of the Jews.(1) Pompey, whom the two brothers called to be umpire between them, subdued them both, at the same time that he dispossessed Antiochus, surnamed Asiaticus, the last king of Syria. The kingdom of Judah passed from the hands of the Asmoneans into those of Herod, a foreigner. The cruel and ambitious policy of that king, who professed only in appearance the Jewish religion, alters the maxims of the ancient government; puts every thing in disorder; confounds at his pleasure the succession of the priests; weakens the pontificate which he renders arbitrary; enervates the authority of the council of the nation, which can no longer do any thing: the whole public power passes into the hands of Herod and of the Romans, whose slave he was, and the Jewish commonwealth is shaken to its foundation.(2)

The plan of this work does not admit of entering into minute proofs of what is advanced; but, by consulting the authorities referred to in the preceding outlines, we will become satisfied that every thing, except God, has had a beginning; that there is no ancient history wherein there do not appear, not only in the early ages, but long after, manifest vestiges of the newness of the world. We see laws establishing manners, polishing, empires forming, mankind,—getting out of his ignorance,—instructed by experience; arts are invented or perfected. According as men multiply, the earth is closer and closer peopled: they pass mountains and precipices, they cross rivers, and at length seas, and establish new habitations.

The earth, which at first was but an immense forest, assumes another appearance. The woods cut down make room for fields, for pastures, for hamlets, for towns, and at length for cities. Men learn to catch certain animals, to tame others, and inure them to service. Together with animals, they acquire the art of managing fruits and plants, and to bend the very metals to their use, and gradually make all nature subservient to their power and genius. The first couple had received from Heaven the order of peopling the earth;(3) and has peopled it. God gave to man dominion over the fish of the sea, the fowl of the air, and all living animals:(4) the most fierce of the creation is brought to obey the dictates of his children. Man has had only to take possession of the gift; and the natural intellect of the most simple has been sufficient to use it to advantage. It is not to the polished Greeks and Romans that mankind is indebted for the discovery of the most useful arts and sciences: we owe the first observations which brought them to light to savages, obscure men, or uncivilized nations. It is they that have procured for us the use of bread, wine, medicinal herbs, domestic animals, the method of melting and bending metals, the manufacture of linen, the art of dying, and all that is most useful and agreeable in human life.

(1) Josephus' *Judaic Antiquities*, XIV. 8, XV. vol. 1, bell. Jud. 4, 5.

(2) Bossuet, *Histoire Universelle, suite de la religion*, vol. 1, page 254 et 255.

(3) Genesis, ch. 1, v. 28.

(4) *Ibid.*

Modern Europe glorifies itself in its discoveries ; but the art of printing, to which its philosophers look for immortality, has been discovered by a man so little known, that many towns in Germany, in Holland, and even in China, claim the honour of the invention.

Galileo could not have calculated the weight of the air had not a fountain maker observed that water could not ascend more than thirty-two feet in the tubes of his aspiring pumps.

Newton would not have read in the heavens without the assistance of children, in Zeland, who, playing with the glasses of a spectacle-maker, found the first tubes of the telescope.

European artillery would not have subjugated America had not a monk, by chance, found the composition of gunpowder.

Whatever glory Spain claims for having discovered a new world, savages from Asia had covered it with nation and empires long before Christopher Columbus was born.

Academies may accumulate machines, systems, books, eulogiums, the principal praise is due to illiterate men, who have furnished the first materials.(1)

But now, with a new age, a new series of extraordinary events opens upon us. With the Roman commonwealth, which swallowed up all the empires of the universe, whence have sprung the greatest of the world,—among them France and England, who have transmitted to us its admirable laws.

Nothing so much maintained the peace of the empire as the order of justice. The ancient republic had established it ; the emperors and the sages explained it upon the same foundation ; all the people, even the most barbarous, regarded it with admiration ; and thereby was it chiefly that the Romans were judged worthy to be masters of the world. In fact, if the Roman laws have appeared so sacred that their majesty still subsists, notwithstanding the ruin of the empire, it is because good sense, which controls human life, reigns throughout the whole, and that there is nowhere to be found a finer application of natural equity.

(1) See Bernardin de St. Pierre, *Etudes de la Nature*, vol. 1, page 40, 41.

CHAPTER X.

OUTLINES OF THE RELIGIOUS, POLITICAL, AND LEGAL HISTORY OF THE ROMANS.

I. Remus and Romulus, their origin. II. Exposed on the borders of the Tiber. III. They restore their Grandfather to the Throne of Alba. IV. They look for a Sheltering Place. V. Foundation of Rome—Death of Remus. VI. A form of Government is established—the Romans obtain Wives. VII. The Sabines become the Allies of the Romans. VIII. Romulus murdered. IX. His Apotheosis. X. Numa Pompilius. XI. Tullus Hostilius. XII. Ancus Martius. XIII. Tarquinus Prescus. XIV. Servius Tullius. XV. Tarquin the Proud—Downfall of Royalty.

I.—Remus and Romulus, their origin.

ABOUT seven hundred and fifty-two years before the common era, Numetor, king of Alba, was dispossessed of his kingdom by his brother Amulius, who, fearing that Numetor might one day find an avenger in some of his descendants, condemned him to have no posterity, by forcing Rhea Sylvia, his only child, to become a vestal.

II.—Exposed on the borders of the Tiber.

The precaution of the usurper was useless : Sylvia gave birth to two sons, Remus and Romulus. Amulius ordered one of his guards to throw them into the Tiber. The guard only exposed them on its borders, where one Faustulus found them, and brought them up as his own children, and his wife, Laurentia nursed them. This woman, on account of her dissolute life, had received the surname of *Lupa* (the she wolf): that gave rise to the fable, that Remus and Romulus had been nursed by a she wolf.

III.—They restore their Grandfather to the Throne of Alba.

Their daring and enterprising character soon made them known. One day as Amulius' shepherds were carrying away some of Numetor's herds, they fell upon them and rescued the herds; inflicted some summary punishment on the shepherds, who sometime after succeeded in bringing Remus before Amulius, who sent him to Numetor to be punished. Meanwhile, Faustulus informed Numetor of all the circumstances relating to the birth of Remus and Romulus; they were acknowledged as the grand-children of Numetor. Remus was set at liberty, which he would otherwise soon have recovered, for Romulus had already placed himself at the head of a gang of vagabonds, and was entering the town, when Remus

informed him of their origin. They instantly formed the resolution to overthrow the usurper, and to restore their grandfather to the throne of Alba, and their project was executed as soon as formed.

IV.—They look for a Sheltering Place.

The two brothers then left Alba, always at the head of bandits, outlaws, robbers, and other bad subjects, and looked for a place where they could both establish themselves, and be protected against their neighbours, whom they intended to pillage.

V.—Foundation of Rome—Death of Remus.

They stopped at the place where Rome was since built. It was not long before a quarrel arose between the brothers: Romulus killed Remus, and remained the only chief of the gang, which considerably increased with persons of all sorts gathered together, who had come to seek freedom and impunity in the asylum Romulus had opened to all comers. He trained this wild people in the spirit of attempting, and to carry every thing by force. It is by this means that he obtained the very women they afterwards married.

VI.—A form of Government is established—the Romans obtain Wives.

Romulus then thought seriously of establishing a permanent form of government. By degrees he established order, and restrained the spirit of the people by salutary laws. He begun with religion: he looked upon it as the best foundation of empires; he made it as solemn and modest as the darkness of idolatry would permit.

He divided the lands into three parts: the first was consecrated to the service of the gods; the second was destined to defray the public expenses; and the third was divided into thirty equal portions, according to the number of wards which composed the total number of the citizens.

The inhabitants of Rome were also divided into three separate orders: the patricians, or fathers, the knights, and the plebeans, or common people. Romulus established a senate, or council, of one hundred, chosen from amongst the patricians; reserved to himself but a small portion of power, or rather little was left to him, for it is not to be supposed that it proceeded from a spirit of moderation on his part.

The senate was to digest and propose all affairs; some it settled sovereignly with the king, but the more general were referred to the decision of the people.

Meantime the Romans had no wives. Romulus sent deputies to the Sabines, and other neighbouring nations, to demand some; but this new people was so badly famed that the deputies succeeded nowhere.

Romulus resolved to have revenge for the contempt of his neighbours, besides to obtain wives: he caused solemn games to be played in honour of Neptune. As it was expected, the Sabines and other surrounding nations came to see them: they were well received; but during the performances, the Romans, sword in hand, fell on this assembly, carried off the girls, and sent their fathers and mothers home.

After many useless tears and screams, the girls pacified themselves, and got accustomed to their husbands, from whom they had received as fair treatment as

they could expect. A war was naturally to follow such a manifest violation of the rights of hospitality. With this war begun the fortunate destiny of Rome. The Cenenians, the Crustumeniens, and the Antemnates, were vanquished, and became Roman colonies; but the most powerful, the Sabines, remained to be conquered. They treacherously, in their turn, introduced themselves into the new city. The fate of Rome was on the brink of ruin, when the Sabines saw with astonishment their daughters, having become the wives of the Romans, supplicating their fathers, their brothers, and their husbands, to lay down their arms. This unexpected event disarmed the most furious: peace was concluded.

VII.—The Sabines become the Allies of the Romans.

The two people became so intimately blended together that the most part of the Sabines became Roman citizens. Their king, Tullius, governed in common with Romulus, until the former was murdered by some of his personal enemies, and Romulus remained the only king of the Romans. He then attempted to increase his authority.

VIII.—Romulus Murdered.

The senators, fearing that their government should become purely monarchical, and finding that Romulus was already too imperious, tore him to pieces in a storm which had suddenly arose during one of their assemblies. He was then fifty-five years old, and had reigned thirty-two.(1)

IX.—His Apotheosis.

As the people were forcing the senate to inform them of the fate of their king, one Proculus, bribed by the senators, swore before the nation, that he saw Romulus descending from heaven, and declared to him that he had been received amongst the gods, and that in this quality he required divine worship. The senators were the first in erecting altars to the one they had murdered. The Romans were ignorant, hence credulous and superstitious: their clamours were silenced, and they believed the story. Thus Romulus became one of their gods.

X.—Numa Pompilius. (A. M. 3290).

Numa Pompilius, their second king, in a long and profound peace, finished the forming of the manners of the Romans, and in settling their religion, upon the same foundation which Romulus had laid.

XI.—Tullus Hostilius. (A. M. 3333).

Tullus Hostilius established, by strict regulations, military discipline and the orders of war.

XII.—Ancus Martius. (A. M. 3378).

Ancus Martius, his successor, mixed with the military practices sacred ceremonies, in order to render the martial art venerable and religious.

(1) Plutarch's Life of Romulus; Bossuet, Histoire Universelle, A. M. 3289.

XIII.—Tarquinus Priscus. (A. M. 3426).

After him, Tarquinus Priscus, to make creatures, augmented the number of the senators to three hundred, where they remained many ages; and he began great works to promote public conveniency amongst the people.

XIV.—Servius Tullius. (A. M. 3448).

Servius Tullius projected the establishment of a commonwealth, under the command of two annual magistrates to be chosen by the people, but did not succeed.

XV.—Tarquin the Proud—Downfall of Royalty. (A. M. 3493).

In hatred of Tarquin the Proud, who had rendered regal authority odious by his oppressive violence, and by the lewdness of Sextus, his son, who gave the finishing stroke by dishonouring Lucretia, who killed herself not to survive to her honour,—her blood, and the harangues of Brutus, spirited up the Romans,—Royalty was abolished, with horrid execrations against any who should attempt to restore it; and Brutus made the people swear eternally to maintain their liberty.

CHAPTER XI.

OUTLINES OF THE HISTORY OF ROME.

I. Consular Government. II. Establishment of Tribunes. III. Decemvirs Established. IV. Principal Laws of the Papyrian Code. V. Division of the Laws of the Twelve Tables. VI. A few of the Principal Laws of the Twelve Tables. VII. The Decemvirs Expelled. VIII. Battle of Cheronea—first Exploits of Alexander. IX. Alexander and Darius. X. The Empire of Alexander is Divided. XI. All yield to the Romans. XII. First step towards the Downfall of the Roman Empire. XIII. Julius Cesar Subdues the Gauls and almost all the World. XIV. He is Murdered. XV. Battle of Actium. XVI. August Cesar—General Peace—The Temple of Janus is Shut—Jesus Christ comes into the World.

I.—Consular Government. (A. M. 3495).

The kings being banished, the consular government was established upon the plan of Servius, but it was soon weakened by the jealousy of the people. In the first consularship, P. Valerius, the consul, celebrated for his victories, was sus-

pected by his fellow citizens, and to satisfy them he was obliged to enact the law which allowed an appeal to the people from the senate and consuls, in all cases wherein the punishment of a citizen was concerned.

II.—Establishment of Tribunes. (A. M. 3511).

Rome, which had so gallantly defended herself against foreign powers, was hardly strong enough to defend herself against her own people. The jealousy had revived between the patricians and plebeians; the consular power, though already moderated by the Valerian law, seemed still exorbitant to a people so jealous of their liberty. They seceded to the Aventine Mount; violent overtures proved fruitless; nothing could bring back the people but the calm remonstrances of Menenius Agrippa, who was, however, necessitated to find some lenitives. He granted to the people tribunes to defend them against the consuls. The law which instituted this new magistracy was called the sacred law. Such was the rise of the tribunes of the people.

Meantime, these new magistrates, given to the Roman people to protect them against the consuls, formed new divisions in the city. Rome, formed under the kings, wanted the laws necessary for the constitution of a good republic. The reputation of Greece, still more celebrated for its government than for its victories, prompted the Romans to take from thence their patterns, so they sent deputies to study the laws of the cities of Greece, and especially those of Athens, which were the most congenial to the state of their infant republic.

III.—Decemvirs Established. (A. M. 3553).

Upon this model, ten absolute magistrates, created the year after, under the name of decemvirs, digested the laws of the twelve tables, which,—combined with the laws made under the kings of Rome, which were imbodyed in one volume by a jurist named Papyrian,—the people, through gratitude, called the Papyrian code, are the foundation of the Roman law of the twelve tables, a model of precision, says Montesquieu.

IV.—Principal Laws of the Papyrian Code.

1. It will be a crime to believe that God has the form or figure of any created things. No image will be made to represent the divinity.
2. Public worship will not be mixed with the fabulous ceremonies of other nations.(3)
4. The king shall preside at all sacrifices.
5. None but the patricians will fulfil sacerdotal dignities.
8. Let law processes be suspended on holidays.
9. Meetings of citizens during the night are forbidden.
15. The people will vote in all public affairs. They will chose the magistrates. No war will be undertaken, no peace will be concluded, without their consent.

16. The murderer shall suffer death ; accidental homicide will be punished by a fine.

21. The husband will obtain a divorce from his wife if she have poisoned her children, fabricated false keys, or committed adultery ; but should the husband otherwise repudiate her, he will be deprived of all his property, one half whereof will be given to his wife, the other half confiscated, and he will be devoted to the gods of hell.

33. Good faith must be the basis of every contract.

V.—Division of the Laws of the Twelve Tables.

1. Concerning legal proceedings.
2. Delays, exceptions, defaults, robbery.
3. Deposit, usury, interests, rights of creditors.
4. Paternal power and marriages.
5. Formalities of wills, order of successions and of tutorships.
6. Sales, possessions, prescriptions, and revendications.
7. Crimes and damages.
8. Congregations and trades.
9. Public law.
10. Solemnities of oaths and funeral ceremonies.
11. Supplement to the first five tables.
12. Supplement to the five last.

VI.—A few of the Principal Laws of the Twelve Tables.

1. Follow without delay before the judge the party who will summon you.
5. If the *adjourned* find a respondent let him go.
6. None but the rich will be allowed to answer for the rich, as for the poor any one will do.
7. The setting of the sun must put an end to all contestations.
8. The parties will be present during the pleadings.
14. The thief taken in the act shall suffer death.
18. A compromise made between a thief and the person he has robbed will be legal and binding.
19. No prescription for a stolen article.
20. No more than one per cent. interest will be allowed, under a fine of four times the amount.
22. No prescription in favour of strangers.
23. The debtor who will have confessed his debt shall have thirty days to pay it.
24. If the debtor then refuse payment, and do not give security, his creditor may put him in chains, but will give him one pound of flour per diem.
32. The will of the father of a family, relative to his property and the tutorship of his children, will be the law after his death.
35. His debts will be paid in proportion to the share each will have in his estate.
36. Should he die without a will, the nearest relative of the children will be their tutor.

38. Every convention must be executed according to the terms in which it has been made. The vendor will guaranty all what he will have mentioned, and should the description not correspond with the thing, he will pay double the value of the object sold.

39. When one will cause his property to pass into other hands, the terms he will make use of will be the law.

41. A thing sold and delivered shall become the property of the purchaser when he has paid for it, only.

42. Real estates will be prescribed after two years' possession, and personal property within one year.

45. The presumption will be always in the favour of the possessor, and in case of slavery in favour of liberty.

46. Should you find that your neighbour has used some of your timber in his building, you will be entitled to double the value thereof, but not to destroy the house so as to take away your property.

47. Should cattle cause any damage in a field, the master will pay damages or give up the cattle.

51. Should any one, during the night, destroy the wheat of others, he shall be hanged to death.

52. Whoever will maliciously set fire to the house of another, or to a stack of wheat near the house, will be burned.

53. Let the one who will have maimed another be punished by the *lex tabionis*.

56. Whomsoever will have, by his speeches, by injurious verses, or otherwise defamed the reputation of others, will be punished by cudgelling.

58. Any one who will refuse to give evidence in a case where he will have been taken as a witness, shall be noted of infamy, and will never be allowed to bear testimony.

59. Every false swearer shall be precipitated from the top of Mount Tarpeius.

61. The one who will have prepared poison, or caused it to be taken, will be put to death.

62. The parricide will be thrown into the river, the head covered with a veil, and the body sewn in a leather bag.

74. No privileges are to be granted to individuals.

75. Not only the debtors who will have been set at liberty, but also foreign rebellious subjects who shall have returned to their duty, will be put in possession of their former rights, as if they had constantly been faithful.

76. Nothing shall be decided in regard to the life or condition of a Roman citizen, unless it shall be in the commices, or centuries (hundreds).(1)

77. Any one who will seditiously assemble during the night shall suffer death.

78. Every one who will incite strangers to declare against Rome will suffer death.

79. Should a judge, or arbiter, receive any money to render a favourable judgment, he shall suffer death.

(1) This seems to be the real origin of jurors.

83. Let excessive pomp be banished from funeral services.

97. The land of sepulture shall never be prescribed, &c.

The laws of the twelve tables, says Cicero,(1) present an image of antiquity. By them we learn the terms that were formerly in use—the rules of the police and establishments made for public utility—even most sublime philosophy will receive sound lessons by those laws; and should the whole world join against my opinion, I cannot disguise what I think, that the laws of the twelve tables appear to me to be preferable to all the libraries of the philosophers.

The people, charmed with the equity with which the decemvirs had composed these laws, suffered them to engross the supreme power, which they used in a tyrannical manner.

VII.—The Decemvirs Expelled. (A. M. 3555).

Great commotions were now occasioned by the incontinence of Appius Claudius, one of the decemvirs, and by the murder of Virginia, whom her father preferred to kill with his own hand than to suffer her to be prostituted to Appius' passion. The blood of this second Lucretia roused the Roman people, and the decemvirs were expelled.

Unfortunate times succeeded. Cimon, son of Methridates, general of the Athenians, reduces Artaxerxes, king of Persia, to make a shameful peace. Despaired of conquering the Greeks by force, Artaxerxes now considered only how to profit by their divisions, which were come to a great height between the Athenians and Lacedemonians. These two states, by the jealousy of each other, divided all Greece. Pericles, an Athenian, commenced the Peloponesian war, which lasted twenty-seven years, and terminated to the advantage of Lacedemon.

During these times the Gauls entered into Italy, and remained seven months masters of Rome, when, being called elsewhere, they withdrew, loaded with booty.

VIII.—Battle of Cheronea—first Exploits of Alexander. (A. M. 3645).

During the broils of Greece, Epaminondus signalized himself by his equity and moderation as much as by his victories. Under so great a general, the Thebans are victorious, and the power of Lacedemon is humbled. That of the kings of Macedon begin with Philip, the father of Alexander the Great. Notwithstanding the opposition of two kings of Persia, and the still greater difficulties created in Athens by the eloquence of Demosthenes, a powerful defender of liberty, that victorious prince, in the space of twenty years, subjected all Greece, where the battle of Cheronea, which he gained over the Athenians and their allies, gave him an absolute power. In that famous battle, whilst he broke the Athenians, he had the joy to see Alexander, at the age of eighteen, plunge through the Theban troops, notwithstanding Epaminondas' discipline, and among others the sacred troop called the *Friends*, which thought itself invincible. Thus, master of Greece, and supported by a son of so great hopes, he meditated nothing less than the ruin of the Persians. But their overthrow was reserved for Alexander.

(1) Cicero, de Oratore, lib. 1; Terrasson, Histoire de la Jurisprudence Romaine, page 93.

In the midst of the solemnities of a second marriage Philip was assassinated. The same year, Arsēs, king of Persia, was killed, and gave the kingdom to Darius.

IX.—Alexander and Darius. (A. M. 3665).

Thus two brave kings began to reign together, Darius and Alexander. They looked upon each other with a jealous eye, and seemed born to dispute the empire of the world. But Alexander wished to establish himself before he attacked his rival. He revenged the death of his father; he subdued the rebellious nations who despised his youth; he beat the Greeks, who vainly attempted to shake off the yoke; and destroyed Thebes, where he spared nothing but the house of Pindar, in favour of his o les. Powerful and victorious, after so many exploits, he marched at the head of the Greeks against Darius, whom he defeats in three pitched battles; enters triumphant into Babylon and Susa; demolishes Persepolis, the ancient seat of the kings of Persia; pushes his conquests as far as the Indies, and returns to Babylon, where he dies in the thirty-third year of his age, A. M. 3660.

X.—The Empire of Alexander is Divided. (A. M. 3674).

During Alexander's conquests, Rome was engaged with the Samnites, her neighbours, and had the utmost difficulty to reduce them. After his death, his empire was divided. His captains sacrificed to their ambition his whole family; nothing was to be seen but bloody battles, and dreadful revolutions. In the midst of so many disorders, several nations of Asia minor, and the neighbourhood, set themselves free, and formed kingdoms.

XI.—All yield to the Romans. (A. M. 3956).

After four hundred and eighty years of war, the Romans, finding themselves masters of Italy, begun to turn their eyes abroad. They now conceived a jealousy against Carthage, which they thought was growing too powerful in their vicinity by its conquests in Sicily, from whence she had made an attack upon Italy. That republic then commanded both coasts of the Mediterranean, possessed almost all Africa, and extended itself on the Spanish side through the streights. Thus, mistress of the sea and of commerce, she had seized on the islands of Corsica and Sardinia. Sicily had difficulty to defend itself: Italy was too nearly threatened not to be alarmed. Hence the punic wars. Every thing yields to the arms of Rome. Carthage, reduced to the last extremity, is obliged to pay tribute to Rome, and to give up, together with Sicily, all the islands that lay between Sicily and Italy.—During all this time intestine wars had desolated Syria, and the Romans suffered that rich kingdom to waste itself away, and extended their dominions to the westward, even beyond the Alps. Sextus, having conquered the Gauls, named Salii, established in the city of Aix a colony which bears his name to this day. Fabulus subdued the Allobroges and all the neighbouring nations. Thus the Roman empire grew in greatness, and gradually possessed itself of all the lands and seas of the known world.

XII.—First step towards its Downfall. (A. M. 3910).

But as fair as the face of the republic seemed outwardly by its conquests, as disfigured was it by the ambition of its citizens, and by its intestine broils. The most illustrious of the Romans became the most pernicious to the public weal. The two Gracchi, by flattering the people, begun divisions which did not end but with the commonwealth.

Whilst Rome protected Capadocia against Methridates, king of Pontus, and so great a foe, yielding to the Roman force with Greece, which had espoused his cause,—Italy, long exercised in arms by so many wars, maintained either for or against the Romans, endangered their empire by a universal revolt. Rome felt herself at the same time torn by the furious animosities of Maryus and Sylla, one of whom had made both the south and the north tremble, and the other was the conqueror of Greece and Asia. Sylla, who was styled the fortunate, was too much so against his country, which his tyrannical dictatorship brought into servitude. He might well lay down voluntarily the sovereign power, but he could not prevent the effect of the bad example he had set. Every one would be master. Sertorius, a zealous partisan of Marius, cantoned himself in Spain, and entered into a league with Methridates. Against so great a captain force was of no avail, and Pompey could find no way of reducing that party but by sowing discord in it.

Lucullus was getting the better in the East. The Romans passed the Euphrates; but their general, invincible against the enemy, could not keep his own soldiers in their duty. Methridates, often beat, but never discouraged, was recruiting his forces, and Pompey's good fortune seemed necessary to put a happy period to the war. He had just completed the scouring of the seas of the pirates that infested them from Syria to the pillars of Hercules, when he was sent against Methridates. His glory appeared there at its height. He totally defeated that valiant king; subdued Armenia, whither he had fled for refuge, Iberia and Albania, which supported him; Syria, torn by its factions; Judea, where the divisions of the Asmoneans left Hircanus Second but a shadow of power, and in short the whole East. But he would not have triumphed over so many enemies but for Cicero, who saved Rome from the flames that were preparing for it by Cateline, backed by the most illustrious of the Roman nobility. That formidable party was ruined by Cicero's eloquence, rather than the arms of Anthony, his colleague. But the liberty of the Roman people was nothing the more secure. Pompey reigned in the senate, and his great name made him absolute master of all deliberations.

XIII.—Julius Cesar Subdues the Gauls, and almost all the World.

(A. M. 3940.)

Julius Cesar, by securing the Gauls, obtained for Rome the most useful conquest it had ever made. So signal a service enabled him to establish his dominion in his country: he wanted first to equal and after to surpass Pompey.

Then money was the greatest agent in Rome. Crassus fancied that by means of his immense riches he might share the glory of these two great men as he did their authority. He rashly undertook a war against the Partheans, which proved fatal to himself and to his country.

The Arsasidae victorious insulted, with cruel *railleries*, the ambition of the Romans, and the insatiable avarice of their general. The disgrace of the Roman name was not the worst effect of Crassus' overthrow. His power counterbalanced that of Pompey and Cesar, whom it kept united against their wish. By his death, the mound that confined them was broke down. The two rivals, who had all the forces of the commonwealth in their hands, decided their quarrel at Pharsalia by a bloody battle. Cesar, victorious, appeared in a moment all over the world. In Egypt, in Asia, in Mauritania, in Spain, conqueror on all sides, he was acknowledged to be the master at Rome, and in the whole empire.

XIV.—He is Murdered. (A. M. 3957).

Yet, notwithstanding his clemency, Brutus and Cassius looked upon him as if he were a tyrant, and thought to set their fellow citizens free by murdering him. Then Rome fell again into the hands of Mark Anthony, Lepidus, and the young Cesar Octavius, grand-nephew to Julius Cesar, and his adopted son, three insupportable tyrants, the history of whose triumvirate and proscriptions cannot yet be read without horror. But their tyranny was too violent to last long. They divided the empire amongst them. Cesar kept Italy, and, changing his former cruelties into mildness, he made the people believe that he was drawn into them by his colleagues; and the remains of the commonwealth perish with Brutus and Cassius.

XV.—Battle of Actium. (A. M. 3968).

Anthony and Cesar, after having ruined Lapidus, fall next upon each other. The whole Roman power puts to sea; Cesar gains the battle of Actium; the forces of Egypt and of the East, which Anthony had brought with him, are dispersed; all his friends abandon him, even his Cleopatra, for whom he had lost himself. Herod, the Idumean, who owed every thing to him, is forced to submit to the victor, and maintains himself, by this means, in possession of the kingdom of Judea.

Every thing yields to Cesar's fortune. Alexandria opens her gates to him—Egypt becomes a Roman province—Cleopatra, despairing of being able to preserve it, kills herself after Anthony.

XVI. August Cesar—General Peace—The Temple of Janus is Shut—Jesus Christ comes into the World. (A. M. 4000).

Rome opens her arms to Cesar, who, under the name of Augustus and the title of emperor, remains sole master of the empire. He subdues, towards the Pyrenees, the revolted Cantabrians and Asturians, Etheopia sues for peace. The Perthians, in fear, send him back the standards taken from Crassus, with all the Roman prisoners. The Indies court his alliance. The Rheti and Grisons feel the force of his arms: their mountains cannot defend them. Parmonia acknowledged him—Germany dreads his force—the Weser receives his laws—victorious by sea and by land—the world is in peace—the temple of Janus is shut—and Jesus Christ comes into the world.

CHAPTER XII.

EVENTS OF THE SEVENTH AND LAST AGE OF THE WORLD.

I. Birth of Christ. (1) *II. Death of Herod.* *III. Death of Augustus.* *IV. Tiberius.* *V. Formation of the Church—Death of Christ.* *VI. Caligula and Claudius.* *VII. Council of Jerusalem, its Promulgation.* *VIII. Nero.* *IX. Vespasian.* *X. Titus—Jerusalem Burned.* *XI. Dometian, his Persecutions.* *XII. Nerva and Trajan.* *XIII. Adrien, he Rebuilds Jerusalem, but Banishes the Jews.* *XIV. Antonius Pius, and Marcus Aurelius.* *XV. Comodus and Pertinax.* *XVI. The Empire put up at Auction—a Lawyer buys it.* *XVII. Severus Africanus and Heliogabalus.* *XVIII. Alexander Severus.* *XIX. Maximin—the Senate appoints four Emperors.* *XX. The Empire is Inundated by Germanic Tribes.* *XXI. Divided amongst Tyrants.* *XXII. The Franks grow Formidable.* *XXIII. Tacitus.* *XXIV. Probus.* *XXV. Diocletian and Maximian.* *XXVI. Constantius Chlorus and Galerius.* *XXVII. Constantine.* *XXVIII. Galerius, his Persecutions and his Death.*

I.—Birth of Christ.

THIS epoch is the most considerable, not only for the importance of so great an event, but also because it is from that date that many ages have computed their years. It has besides this remarkable in it, that it pretty nearly coincides with the time in which Rome returns to a state of monarchy, under the peaceful empire of Augustus.

II.—Death of Herod. (A. D. 8).

The birth of Christ was soon followed by the death of Herod, and his kingdom was not long in falling into the hands of the Romans.

III.—Death of Augustus.

Augustus ended his reign with great glory.

IV.—Tiberius. (A. D. 14).

Tiberius, whom Augustus had adopted, succeeded him without opposition, and the empire was acknowledged hereditary in the house of the Cesars. Rome had

(1) It is not agreed what is the precise year Jesus Christ came into the world, but is generally allowed that he was born in December, four years before the vulgar era, in the year of the world 4000.

much to suffer from the cruel policy of Tiberius: the rest of the empire was tolerably quiet. Germanicus, nephew of Tiberius, pacified the rebel armies—refused the empire—beat the proud Armenius—pushed his conquests as far as the Elbe—and having attracted, together with the love of those people, the jealousy of his uncle, that barbarian occasioned his death, either by grief or poison.

V.—Formation of the Church—Death of Christ.

The times marked by the Hebrew prophets had occurred. (1) Jesus Christ establishes his mission and doctrine. By his miracles, and afterwards by his death, the church is formed—persecution commences—St. Stephen is stoned to death—St. Paul is converted.

VI.—Caligula and Claudius. (A. D. 41).

A short time after Tiberius dies, Caligula, his grand-nephew, his son by adoption, and his successor, astonishes the world by his cruel and brutal folly. He claims adoration, and commands that his statue be set in the temple of Jerusalem. Chereas rids the world of this monster.

Claudius reigns, notwithstanding his stupidity. He is dishonoured by Messalina, his wife, whom he demands back, after having caused her to be put to death. He is next married to Agrippina, daughter of Germanicus.

VII.—Council of Jerusalem, its Promulgation. (A. D. 50).

The apostles hold the council of Jerusalem, in which St. Peter speaks the first, as he does every where else: the converted Gentiles are there freed from the ceremonies of the Hebraic law. The sentence is pronounced in the name of the Holy Ghost and the church; St. Paul and St. Barnabas carry the decree of the council to the churches. Such was the form of the first council of the church of Christ. (2)

VIII.—Nero. (A. D. 54).

The stupid Claudius disinherited Britannicus, and adopted Nero, the son of Agrippina. She, in return, poisoned her too easy husband; but her son's government proved no less fatal to herself than to all the rest of the empire. Corbulo gained all the honour of his reign by the victories he obtained over the Parthians and Armenians. Nero commences at once the wars against the Jews, and the persecutions against the Christians. He was the first emperor who persecuted the church: he caused Peter and Paul to be put to death at Rome. But as he, at the same time, persecuted all mankind, they revolted against him on all sides. Having been informed that the senate had condemned him, he killed himself.

IX.—Vespasian. (A. D. 70).

Each army makes an emperor; their quarrel was decided near and in Rome itself by horrid battles. The distressed empire found some rest under Vespasian.

(1) Daniel, ch. 9, v. 27.

(2) Acts, ch. 16, v. 4.

X.—Titus—Jerusalem Burned. (A. D. 79).

Titus, his son and successor, who thought his days lost when they were not, marked by some good action, hurried too fast to an end. But the Jews were reduced to the last extremity. Jerusalem was taken and burned.

XI.—Dometian, his Persecutions. (A. D. 93).

Now we behold Nero revive in the person of Dometian. He renewed the persecutions against the Christians. The ecclesiastical historians reckon ten persecutions under ten emperors, and thirty popes sealing with their blood that Gospel which they were announcing as the word of God to the world.

XII.—Nerva and Trajan. (A. D. 96).

Dometian is killed; the empire begins to enjoy some respite under Nerva. Quiet at home and triumphant abroad under Trajan, with whom it was a maxim that the citizens ought to find him such as he would wish to find the emperor, if he was a private citizen.

XIII.—Adrien, he Rebuilds Jerusalem, but Banishes the Jews. (A. D. 120).

The reign of Adrien was blended with good and evil. This prince maintained military discipline—lived himself in a soldiery way and with frugality—eased the provinces—made the arts flourish, and Greece also, who was the mother of them. The barbarians were kept in awe by his arms and authority. He rebuilds Jerusalem, but banishes the Jews out of it, who were ever rebels to the empire. They found in him a merciless avenger. He sullied, by his cruelties and monstrous loves, the lustre of so bright a reign, which he partly retrieved by adopting Antonius Pius, who adopted Marcus Aurelius, the sage and Philosopher.

XIV.—Antonius Pius, and Marcus Aurelius. (A. D. 138).

In these two princes appear two beautiful characters: the father, ever in peace and always ready to make war; the son, ever at war and always willing to give peace.

The Parthians and Marcomanians experienced the valour of Marcus Aurelius. The latter were Germans, to whom the emperor was giving the finishing stroke when he died.

XV.—Comodus and Pertinax. (A. D. 169).

Comodus, his son and successor, unworthy of such a father, forgot both his instructions and his example. The senate and the people abhorred him, and his minions and his mistresses put him to death.

His successor, Pertinax, a vigorous prince, asserter of military discipline, fell a sacrifice to the fury of the licentious soldiers, who had but a little before forced the sovereign power upon him.

XVI.—The Empire put up at Auction—a Lawyer buys it. A. D. 194).

The empire being put up to action by the army, found a purchaser. The juria-consult, Julianus, ventured upon the bold bargain: it cost him his life.

XVII.—Severus Africanus and Heliogabalus. (A. D. 218).

Severus Africanus put him to death—revenged Pertinax—passed from the east to the west—triumphed in Syria, Gaul, and Great Britain. The rapid conqueror equalled Cesar by his victories, but imitated not his clemency. The bad conduct of his children punished him for his cruelties. Caracalla, his eldest son, killed his brother and colleague emperor, in the arms of Julia, their common mother: spent his life in cruelty and carnage, and brought upon himself a tragical end. His son, Heliogabalus, at least reputed such, by his infamous conduct, became the horror of mankind, and destroyed himself.

XVIII.—Alexander Severus. (A. D. 222).

Alexander Severus, his cousin and successor, lived too short a time for the good of the world. Under his reign, Artaxerxes, the Persian, killed his master, Artabanus, the last king of the Parthians, and restored the empire of the Persians in the East.

XIX.—Maximin—the Senate appoints four Emperors. (A. D. 236).

The affairs of the empire were embroiled in a terrible manner. After the death of Alexander, the tyrant Maximin, who had killed him, made himself master, though of Gothic race. The senate set up four emperors in opposition to him, who were all cut off in less than two years.

XX.—The Empire Inundated by Germanic Tribes. (A. D. 258).

About that time begun the inundation of the barbarians, and other people of Germany; and the Goths, formerly Gastae, poured into the empire: other nations which inhabited about the Euxine sea, and beyond the Danube, entered into Europe. The East was invaded by the Asiatic Scythians and the Persians. These defeated Valerian, whom they afterwards took in a treacherous manner; and after letting him linger out his days in painful slavery, they fled him, and made of his torn skin a monument of their victory. Gallian, his son and colleague, utterly ruined all by his softness.

XXI.—Divided amongst Tyrants. (A. M. 264).

Thirty tyrants divided the empire amongst themselves. Odenatus, king of Palmyra, an ancient city founded by Solomon, the best of them,—rescued the eastern provinces out of the hands of the barbarians, and made himself acknowledged in them. His wife, Zenobia, marched with him at the head of his armies, which she commanded alone after his death, and rendered herself famous all over the earth, for having joined chastity with beauty, and knowledge with courage. By Claudius II., and after him by Aurelian, the affairs of the empire were retrieving.

XXII.—The Franks grow Formidable. (A. D. 275).

Then begun the Franks to grow formidable. These were a confederacy of German states, who dwelled along the Rhine. Their name speaks them united from the love of liberty. Aurelian had beat them, when a private person, and

70. EVENTS OF THE SEVENTH AGE OF THE WORLD.

kept them in awe when emperor. But that prince made himself hated by his bloody actions. His wrath, too much dreaded, occasioned his death. Those who thought themselves in hazard, resolved to be beforehand with him, and his secretary being threatened, put himself at the head of the combination. The Army, who saw him cut off by the conspiracy of so many chiefs, refused to choose an emperor, for fear of setting on the throne one of Aurelianus's assassins; and the senate, restored in its ancient rights, elected Tacitus.

XXXIII.—*Tacitus.* (*A. D.* 276).

This new prince was venerable for his age and for his virtues; but he became odious, through the violence of a relative to whom he gave the command of the army, and perished with him, in a sedition, in the sixth month of his reign. His brother, Florian, claimed the empire by right of succession, as being the nearest heir. This right, however, was not acknowledged.

XXIV.—*Probus.* (*A. D.* 278).

Florian was killed, and Probus was forced by the soldiers to accept the empire. Every thing yielded under so great a captain. The Germans and Franks, who attempted to enter Gaul, were repulsed, in the east as well as in the west. So formidable a warrior aspired at peace, and gave the empire to hope it should have no more occasion for military men. The army revenged that insinuation, and the strict regulations their emperor made them observe. The moment after, confounded at the violence they had used to so great a prince, they honoured his memory, and gave him for successor Carus, who was no less zealous for discipline than himself. This valiant prince revenged his predecessor and quelled the barbarians, to whom the death of Probus had given fresh courage. The whole East trembled before him; but heaven stopt his career by a flash of lightning.

XXV.—*Diocletian and Maximian.* (*A. D.* 284).

Diocletian at last arrived at the empire, and was slain by one of his own men, whose wife he had debauched. Thus the empire got rid of the most violent and most abandoned of all men. Diocletian governed with vigour, but with an insupportable vanity. In order to make head against his enemies that were rising on all sides, both at home and abroad, he named Maximian emperor with him; but preserved the chief authority to himself. Each emperor made a Cesar. The four princes were hardly able to support the burden of so many wars. Diocletian fled Rome, which he found too free. Meanwhile, the Persians, vanquished by Galerius, gave up to the Romans large provinces and whole kingdoms. After such great successes, Galerius will no longer be a subject, and scorns the name of Cesar. He begins by intimidating Maximian. A long illness had sunk the spirit of Diocletian, and Galerius, though his son-in-law, forced him to quit the reins of the empire. Maximian was obliged to follow his example. Thus the empire came to the hands of Constantius Chlorus and Galerius, and two new Cesars were created.

XXVI.—Constantius Clorus and Galerius. (A. D. 304).

Gaul, Spain, and Great Britain were happy: the rest of the empire suffered greatly under so many emperors and Cesars. Officers multiplied with princes; expenses and exactions were infinite; young Constantine, son of Constantius Clorus, began to distinguish himself; at the death of his father, he succeeded him.

XXVII.—Constantine. (A. D. 207).

The receiving of the images was the usual form of acknowledging new princes; that of Constantine being carried to Rome, was rejected by order of Maxentius. War is prepared for on all sides, and anew breaks out.

Maxentius, under pretext of revenging his father, declares against Constantine, who marches to Rome with his troops. At the same time he caused the statues of Maximian to be thrown down; those of Diocletian, which stood next to them, shared the same fate. Diocletian's repose was disturbed by this piece of contempt, and he died sometime after, as much of vexation as old age.

XXVIII.—Galerius, his Prosecutions and his Death. (A. D. 302).

In those times,(1) Rome, a constant enemy to Christianity, made a last effort to extinguish it, and completed its establishment. Galerius, marked by the historians as the author of the last persecution, two years before had obliged Diocletian to quit the empire, forced him to make that bloody edict, which commanded the Christians to be persecuted more violently than ever. Maximian, who hated and had never ceased tormenting them, spirited up the magistrates and executioners by his violence, however excessive, did not equal that of Maximian and Galerius. New punishments were daily invented. The modesty of the Christian virgins was no less attacked than their faith. The strictest search was made for the sacred books, in order to abolish the very memory of them, and the Christians dared not have them in their houses, nor almost presume to read them. Thus, after three hundred years persecution, the malice of the persecutors became still more inveterate. The Christians wearied them by their patience. The people, touched with their holy life, turned converts in great numbers. Galerius despaired of being able to suppress them. He was struck with an extraordinary disease, revoked his edicts, and died the death of Antiochus. Maximian continued his persecutions.

(1) Eusebe, viii; Hist. Ecl. 16 de Vit.; Const. 1, 57.

CHAPTER XIII.

STATE OF THE EMPIRE DURING AND AFTER THE REIGN
OF CONSTANTINE.

I. Constantine embraces Christianity. II. Julian's Revolt and Apostacy. III. Jovian. IV. Valentinian. V. Gratian. VI. Theodosius, the delight of the World. VII. Arcadius and Honorius. VIII. The Franks get Possession of the Gauls. IX. The Anglo-Saxon Race Invades the South of Great Britain. X. Rome becomes a prey to the Barbarians. XI. Clovis Overthrows the Roman Power in the Gauls. XII. Justinian, his Death. XIII. Charlemagne, the Franks, and the Saxons.

I.—Constantine embraces Christianity. (A. D. 312).

Constantine, a victorious prince, publicly embraces Christianity. This prince died, after having divided the empire amongst his three sons, Constantine, Constantius, and Constans. Their unity was soon disturbed: Constantine perished in the war he had with his brother Constantius, about the limits of their empire; Constantius and Constans agreed but little better.

Whilst Constantius was taken up with the affairs of Arianism, he neglected those of the empire. The Persians got great advantages; the Germans and Franks attempted on all hands an entrance into the Gauls. Julian, the emperor's cousin, stopt their career, and beat them: the emperor himself defeated the Sarmatans, and marched against the Persians.

II.—Julian's Revolt and Apostacy. (A. D. 360).

Then appeared Julian's revolt against the empire—his apostacy—the death of Constantius—the reign of Julian—his equitable government. But that glory he too greedily pursued, proved the cause of shortening his days. He was slain in Persia, where he had engaged himself rashly.

III.—Jovian. (A. D. 363).

Jovian, his successor, a zealous Christian, found things desperate, and lived only to conclude a shameful peace.

IV.—Valentinian. (A. D. 364).

After him, Valentinian made war like a great captain—maintained military discipline—beat the barbarians—fortified the frontiers of the empire. Valentinian died, after a violent speech he made to the enemies of the empire. His impetuous passion, which rendered him dreaded by others, at last proved fatal to himself.

V.—Gratian. (A. D. 371).

Gratian, his successor, beheld without envy the promotion of his younger brother, Valentinian II., who was made emperor, though but nine years old. Here we see in a few years some wonderful events: the revolt of the Goths against Valens. That prince leaves the Persians to suppress the rebels: Gratian hastens to join him, after gaining a signal victory over the Germans: Valens, resolving to conquer alone, precipitates the fight, in which he is routed near Adrianople: the victorious Goths burn him alive, in a village whither he had retired: Gratian, overburthened with affairs, associates in the empire the great Theodosius, and keeps to himself the East: the Goths are vanquished: all the barbarians are kept in awe.(1)

VI.—Theodosius, the delight of the World. (A. D. 379).

Whilst Theodosius governed with so much fortitude and success, Gratian, who was no less valiant, being deserted by his troops, wholly made up of foreigners, fell a sacrifice to the tyrant Maximus. The tyrant reigned in the Gauls, and seemed content with that share; but soon after he makes himself master in Rome, where he revives paganism, in complaisance to the senate, still almost wholly pagan. After he had got possession of all the west, Theodosius, assisted by the Franks, defeated him in Pannonia and besieged him in Aquileia, suffered him to be slain by his soldiers.

In his time, Saint Jerome, having retired to the sacred grotto of Bethlehem, undertook immense labours, in order to expound the Scriptures. He read all the interpreters—searched all the histories, both sacred and profane, that could give any light to it—and composed from the original Hebrew that version of the Bible which the whole church has received under the name of Vulgate.

Theodosius, now absolute master of both empires, restored that of the west to Valentinian, who did not keep it long: he was slain in Gaul, near Vienna, by the tyrant Eugenius, whom he had raised to power. Theodosius, now alone, was the delight and wonder of the world.

VII.—Arcadius and Honorius. (A. D. 395).

The empire, that seemed invincible under Theodosius, changed its aspect in a moment under his two sons: Arcadius had the east, and Honorius the west. They both, being governed by their magistrates, made their power subservient to private interests. The west was disturbed by the incursion of barbarians Rada-gaise, a Goth and a heathen, ravaged Italy. The Vandals, a Gothic nation, seized on part of Gaul, and spread themselves into Spain. Alaric, king of the Visigoths, compelled Honorius to yield up to him those large provinces already possessed by the Vandals. That prince relieved the Britons of their allegiance to Rome, at least left the defence of their island to themselves. Meanwhile, Arcadius died, and put his son Theodosius, a child of eight years old, under the tuition of Isdegerd, king of Persia. But Pulcheria, the young emperor's sister,

(1) Bossuet, *Histoire Universelle*, vol. 1, page 121.

proved capable of great affairs. Theodosius' empire was supported by the prudence and piety of that princess: that of Honorius seemed near its ruin. He caused Stilico to be put to death, but could not fill his place with so able a minister. The revolt of Constantine—the total loss of Spain and Gaul—and the taking and sacking of Rome by the arms of Alaric, were the consequences of the death of Stilico.

Ataulph, more furious than Alaric, pillaged Rome anew, and thought of nothing less than abolishing the Roman name; but, for the happiness of the empire, he seized Placidia, the emperor's sister. That captive princess, whom he married, mollified him. The Goths treated with the Romans, and established themselves in Spain, reserving in the Gauls the provinces that lay towards the Pyrenees. Meanwhile the Burgundians, a German people, seized upon the neighbourhood of the Rhine, whence, by degrees, they gained the country that still bears their name.

VIII.—The Franks get Possession of the Gauls. (A.D. 450).

The Franks did not forget themselves, and resolved to make new efforts to open a passage into the Gauls. They raised to royalty Pharamond, and the monarchy of France took its rise under him. The unfortunate Honorius died without issue, and without providing for the empire. Theodosius appointed Valentinian III. his cousin, emperor. During his reign, he caused the laws to be revised and compiled, and composed a code, which, from his name, was called the Theodosian Code.

The Gauls began to acknowledge the Franks. Ætius had defended them against Pharamond and Clodion, the thick haired; but Meroveus was more successful, and made a surer settlement in them.

IX.—The Anglo-Saxon Race Invades the South of Great Britain. (A.D. 452).

Much about the same time the Angles, a Saxon people, invaded the south part of Great Britain: they gave it their name, and there founded several kingdoms. The Huns, a people from Palus Meotis, desolated the whole world with an immense army, under the command of Atila, their king, the most shocking of all men; and Ætius, who defeated him in the Gauls, could not prevent his ravaging Italy. The Adriatic islands afforded a retreat to many against his fury: Venice arose in the midst of the waters. Pope Leo, more powerful than Ætius and the Roman armies, commanded respect from that barbarous and heathen king, and saved Rome from pillage; but she was soon after exposed to it by the debauches of her emperor, Valentinian. Maximus, whose wife he had ravished, found means to destroy him by dissembling his resentment, and making a merit of his complaisance. By his deceitful counsels, the blinded emperor put to death Ætius, the sole bulwark of the empire. Maximus, the author of the murder, stirs up the friends of Ætius to revenge, and so gets the emperor killed. By these steps he ascends the throne, and compels the empress Eudoxia, daughter of the younger Theodosius, to marry him. In order to get out of his hands she was not afraid to put herself into those of Genseric.

X.—Rome becomes a prey to the Barbarians. (A. D. 456).

Rome becomes a prey to the barbarians; St. Leo prevents his putting every thing to fire and sword; the people tear Maximus to pieces, which is their only, though dismal, consolation in their calamities. All is embroiled in the west; several emperors rise and fall almost at the same time. Majorian was the most considerable: Avitus but ill supported his reputation. The Gauls can no longer hold out against Meroveus and Childeric, his son. Augustus, commonly called Augustulus, was the last emperor acknowledged at Rome: he was dispossessed by Odoacer, king of the Herulians. These were a people from the Euxine sea, whose dominion did not last long.

XI.—Clovis Overthrows the Roman Power in the Gauls. (A. D. 495).

The Romans saw the overthrow of their power completed in the Gauls, by the victories of Clovis. He gained also the battle of Tolbiac, over the Germans. At this period Italy and Rome became altogether a prey to the barbarians. Africa was occupied by the Vandals, Spain by the Visigoths, the Gauls by the Franks, and Great Britain by the Saxons.

XII.—Justinian, his Death. (A. D. 527).

Justinian is associated to the remnants of the empire, whose long reign is celebrated for the labours of Tribonian, compiler of the Roman law, and for the exploits of Belisarius and Narzes. These two famous captains checked the Persians, defeated the Ostrogoths and Vandals, and recovered for their master, Africa, Italy, and Rome; but the emperor, jealous of their glory, without offering to take part in their toils, was more troublesome than useful. Justinian, being restored, proved ungrateful to his friends. By revenging himself of his enemies he made more formidable ones, who killed him.

XIII.—Charlemagne, the Franks, and the Saxons. (A. D. 768).

Justinian had paved the way for Charlemagne and the Franks: the Saxons had the advance. Thus England and France were established the principal representatives of the Roman empire; together with the pope, who kept the head.

Clovis, with his Frenchmen, embraces Christianity,⁽¹⁾ and obtain the title of Most Christian; rids the world of the terrible Alaric; causes Toulouse and Aquitaine to be added to his kingdom. The exploits of Belisarius and of Narses, in support of Rome, are of no avail: the Roman emperors have become mere shadow: pestilence augments the other calamities: St. Gregory, notwithstanding his modest reluctance, is promoted to the chair of St. Peter. That great pope instructs emperors and princes—enforces due obedience to their authority—comforts Africa in the catholic faith—confirms Spain—converts England—reforms the discipline of the church of France—bends the haughty Lombards—saves Rome and Italy, which the emperors are unable to assist—checks the growing pride of the patriarchs of Constantinople—enlightens the whole church by his doctrine—

(1) From A. D. 495 to A. D. 595.

governs the east and the west with equal vigour and humility—and affords the world a perfect model of ecclesiastical government, to which some time after a temporal one will be added by the French monarchs.

CHAPTER XIV.

HISTORICAL SKETCH OF THE CONTINUATION OF THE ROMAN LAWS,

AFTER THE PROMULGATION OF THE TWELVE TABLES.

I. Of the Roman Laws following those of the Twelve Tables. II. Of the Flavian Law. III. Of the Cælian Law. IV. Of the Plebiscitum and Agrarian Laws. V. State of the Roman Jurisprudence under Julius Cesar. VI. Of the Lex Regia, and the Laws of the Emperors. VII. Of the Gregorian and Hermoginian Codes. VIII. Of the Theodosian Code. IX. Of the Compilation of Justinian. X. Of the Code. XI. Of the Digest. XII. Of the Institutes. XIII. Of the Correction of the Code and of the Novels.

I.—Of the Roman Law after the Promulgation of the Twelve Tables.

The civil law, as all the sciences of the first order, has its general theory and its branches of application. The first laws ruled the relations men had together. The necessity of fixing the mode and exercising these relations, or rather the rights resulting from them, was soon felt, and forms for judiciary and voluntary acts were established. It must be upon that principle that these two parts of civil legislation have been established: such was the case with the Romans. The senate, which, after the expulsion of the kings, had attributed to itself the exclusive knowledge of all affairs, but in its judgments had no other guide than natural equity, with which it is so easy to confound interest and passion,—was at last obliged to yield to the wish of the tribunes, who were pressing it, to obtain a body of laws, in which every citizen might be informed of his rights, of the mode of enforcing them, and of the duties he had to fulfil. Solon had illustrated his country by the wisdom of his institutions. Deputies were sent to Athens, and other Grecian cities, to acquire a knowledge of their best laws and most useful usages: the laws of the twelve tables were the result. But they had not determined the manner in which the citizens

would exercise their rights; they contained only the theory of positive justice: what is generally termed practice, was to be established. To fill up that difficulty, the Roman jurists invented public forms, which were named the actions of the law, by which both judiciary acts, and acts purely legitimate, had their solemnities. The pontiffs, the patricians, and the law practitioners, were the sole guardians of these forms. The latter, jealous of their authority, and desirous to make themselves necessary to the plebeians, at the same time; as they attached the most strict observance to these forms, the least omission of which, caused an absolute nullity, they concealed them from the people. The result of this scheme was that the practitioners were consulted as so many oracles, and thereby obtained numerous clients, thus securing as many votes in public elections.

II.—Of the Flavian Law.

One Flavius, the son of a freed slave, found means to purloin the book of actions, and made it public. The people, through gratitude, elected him edile, and named the book the Flavian code.(1) The gift was as agreeable to the people as it was vexatious to the patricians. These, to remain in possession of the forms, composed others, and augmented them with symbolic signs and solemnities; as the gift of an iron ring, in promise of marriage; the joining of right hands, to express the mandate, &c.

III.—Of the Œlian Law.

Sextus Œlius, being appointed edile of Rome, again made these forms public. Soon after, written signs, or abridged notes, were substituted to them, and the forms were abrogated by Theodosius, the younger.(2)

IV.—Of the Plebiscitum and Agrarian Laws.

Their difference from the *leges*, or laws, properly so called, were:

First—That the law was to be made at the instance of the patrician magistrate, and the *plebiscitum* at that of a tribune of the people.

Second—To sanction a law, it was necessary that all the different orders of the people were assembled. The *plebiscitum* emanated from the sole tribunal of the plebeians.

Third—The law was to be published at the *champ de mars*; the *plebiscitum* was published either at the capitol or at the circus, and more generally at the *comitium*, or assembly of the people.

Fourth—To receive a law, it was necessary to assemble the *comitium* by centenaries; the assembly of the tribunes sufficed for the *plebiscitum*.

Fifth—It was the tribunes who generally opposed the passing of a law, and the patricians who opposed the passing of a *plebiscitum*.

(1) Digest, lex 2, § 7, de Origine Juris; Terrasson, Histoire de la Jurisprudence Romaine page 208; Massé, Discours sur la Science des Notaires, page 10.

(2) Law, 15th Code; of Wills, 21st Code, de Legatis; Law, Code de Formul.

V.—*State of the Roman Jurisprudence under Julius Cesar.*

Julius Cesar, one of the greatest men among the Romans, and one of the most zealous for the good of his country, was, however, the first who violated and trampled upon the liberty of the republic, and who laid the foundation of a new monarchical government. To this end, he caused himself to be created dictator. Not satisfied of being invested with the sovereign power—he wanted to make it permanent—he was made perpetual dictator, in violation of the laws which had at that time governed Rome. From that epoch the republic was at an end; from that time Rome was at the feet of a master, whose mighty mind saw that the best guarantee of his power would rest only in the establishment of a settled and permanent system of jurisprudence; for frequently the first cause of a revolution had been the introduction of a bad law.

He undertook a general revision of the laws—the task was light for him, for he had already made many—by which he had corrected what was defective in the old. He had moderated the avidity of the magistrates, by the law *Julia de Repe-tundis*; he had fixed the sacerdotal functions, by the law *Julia de Sacerdotiis*; he had declared himself against usury, by the law *Julia de Pecuniis mutuis*; he was the author of the law *Julia Agraria*, inflicting severe punishment upon those who would remove land marks. Historians regret that he did not complete his object being as good a legislator as a great warrior.(1)

This is what can be the most relied on, as relative to the Roman jurisprudence to the end of the republic.

VI.—*Of the Lex Regia and of the Laws of the Emperors.*

At the commencement of the empire, Octavius Cesar attributed to himself alone the legislative power: that of the senate and of the people had fallen. He made use of this power to regulate the rank and fortune of each citizen—to insure the punishment of crimes, to preserve the honest and good from falling under the oppression of others. Contrary to the 74th law of the twelve tables, he granted privileges to those who brought to, or cultivated for Rome some useful science. The people confirmed to him the legislative power, by a law which was called *Lex Regia*. Tiberius, his successor made use of it only to place himself above the laws, and to violate the rules even of common decency.

Tiberius Claudius, the successor of Caligula, cannot be accused of not having used of the right of legislating, for he published twenty edicts in the course of one day. He forbid wives from obliging themselves for their husbands. He was old, and wanted to get married, he mitigated the law that prohibited the marriage of old people.

His desire was to get for his wife the daughter of Germanicus, his brother, and he caused a law to be passed, by which the marriage of the uncle and the niece was permitted. This emperor's name is found in five places of the digest.

Nero—it is to the honour of jurisprudence that he did not meddle much in the making of laws—however made a good one, which prohibited those drawing wills for others to insert any legacies in their own favour.

(1) See Terrasson, *Histoire de la Jurisprudence Romaine*, pages 335, 336.

The *Lex Regia* was not renewed in favour of either Calba or Vitellius.

The great qualities of Vespasian caused the *Lex Regia* to be renewed in his favour. He caused it to be engraved on tables of brass, and a fragment of it was discovered during the pontificate of Gregory the Thirteenth, who caused it to be placed in the capitol, where it is preserved to this day.

Nerva made the third law of the digest *de Termino Modo*; dispensed the military wills of formalities.

Trajan had had Plutarch for his preceptor, who inspired him with the desire to equal the great men whose lives that historian has left. His successors, in taking possession of the supreme power, wished to themselves the prosperity of Augustus and the honesty of Trajan. Only a few of his laws are to be found in the code, but the Roman lawyers have cited him seventeen times in the digest.

Adrien succeeded to the virtues and title of Trajan, whose cousin he was. He is the author of many laws: it is he who decided that a treasury found by the proprietor on his ground should belong to himself; if found by a stranger, in presence of the proprietor of the soil, it should be equally divided between the two: that a child born within eleven months from the death of his mother's husband was to be legitimate. He gave rescripts in favour of the Christians, which rescripts he caused to be assembled under one law, under the name of the *perpetual edict*.

Antonius Pius contributed to the progress of jurisprudence. The law which deprives the husband of the right of accusing his wife of adultery if he was himself guilty of that crime, is attributed to him. Nine of his constitutions are inserted in the code, and more than eighty in the digest.

Marcus Aurelius, the philosopher, and Lucius Verus, are called *Devis fratres* in several laws. They made a great number of constitutions, of which five only are found in the code, but more than forty in the Theodosian digest; four in the Justinian code, and twenty in his digest.

Septimus Severus, endowed with great courage, and a better general than any of his predecessors, was also much versed in the knowledge of the law. One hundred and thirty of his are inserted in the code, fifty in the digest, and eighty in the institutes.

Maximus, his successor, made sound laws, of which three only are to be found in the code.

Gordian, who reigned only about one month, had no time to make laws.

Gordian, his grandson, made a great number of laws, of which two hundred are included in the digest.

Philip, who caused Gordian to be put to death, made no other edicts than those against the Christians.

Tribonius, Gallus, and Valusianus, his son, reigned only eighteen months: they were all killed in a revolt. Two of their laws are inserted in the code. Galerian promulgated seventy-two constitutions, forming part of the code, and Gallien, his son, four.

Flavius Claudius, their successor, employed almost all his time to persecute the Christians. Only two of his laws are to be found in the code.

Aurelian, Probus, Carus, Numerius, and Carinus, reigned in the whole fifteen years. The two first were assassinated by his brother-in-law, the fifth killed by

a tribune, whose wife he had seduced. There are in the code five constitutions of Aurelian, four of Probus, one of Carinus, four of Carus, and six of Numerian and Carinus, reigning together.

Diocletian, one of the most cruel persecutors of the Christians, has left ten constitutions inserted in the code.

The great troubles which agitated the empire, after the abdication of Diocletian, prevented his successors from enacting any laws. There are only two of Constantius Chlorus' inserted in the code, and one of the other emperor's.

To this is reduced what the emperors have left from Adrian to Constantine; but it is during that period that the most part of the celebrated Roman jurists have shined, whose writings have served to compose the digest.

VII.—Of the Gregorian and Hermogenian Codes.

Constantine, during his reign made a great number of laws and constitutions, which he clothed with regal authority, so that they might be observed throughout the empire. At the same time, two individuals collected and published the laws and constitutions of the emperors, from the reign of Adrian to that of Diocletian. It is this collection that, from the names of the compilers, have been known by the appellation of the Gregorian and Hermogenian codes; although cited by Justinian, they were never sanctioned by public authority. Of these codes, nothing could remain had not Anien, one of the jurists of the barbarian Alaric, preserved a few fragments of them.

Theodosius, known in history under the name of Theodosius the Great, published a great number of edicts in favour of the Christian religion: Arcadius and Honorius augmented their number. The multiplicity of these laws, edicts, and constitutions rendered the study of jurisprudence tedious and difficult. That prompted Theodosian, the younger, to give his code.

VIII.—Of the Theodosian Code.

That emperor entrusts eight jurists with the execution of this enterprise, who divided this code in sixteen books. Theodosius promulgated many other constitutions. These new laws and the Theodosian code were insufficient altogether when Justinian arrived to the empire. Jurisprudence had become so confused and uncertain, and the number of suits was so much increasing every day, that the judges themselves were in doubt how to decide. That gave rise to the compilation of Justinian.

IX.—Of the Compilation of Justinian.

To remedy the disorder which existed in the administration of justice, Justinian formed the design of making a new code, to be taken from the constitutions he had himself published, and of the three codes of Gregorian, Hermogenian, and Theodosian, as of the novels, or new constitutions of Theodosius and his successors. Tribonian, and nine other jurists, were directed to frame it, which they did in the course of one year. That code was published at the Ides of March A. D. 529.

X.—Of the Code.

The principal matters treated in this work are :

First—Of the catholic faith, of churches, of bishops, persons in holy orders, and of their jurisdiction, of the imperial ordinances, of ignorance in matters of fact, and matters of law, of the magistrates and their duties.

Second—Of law suits and law proceedings, of advocates, and persons intrusted with the interest of others.

Third—Of the duties of judges, and of all matters relative to judicial order, wills, donations, actions, demands of heirship, consecrated ground for sepultures, funeral services.

Fourth—Of personal actions, obligations, actions resulting therefrom.

Fifth—Of marriages, contracts of marriages, second marriages, appointment of tutors and curators.

Sixth—Again treats of wills, substitutions, legacies in trust, and successions.

Seventh—Of prescriptions, judgments and their execution, of privileges.

Eighth—Of judgments in possessory actions, pledges, mortgages, and their accessories, novations, delegations, evictions, paternal authority, customs, deeds of gift, &c.

Ninth—Of crimes and their punishment, accusations, prisons, high treason, adultery, illicit intercourse, public and private violence, injuries to the person or to character, defamation, libels, harbouring criminals.

Tenth—Of the public treasury, of vacant property, taxes, change of domicile, prohibition to perpetuate public places in families.

Eleventh—Trades, public registers, police.

Twelfth—Dignities, military discipline, public employment, illegal profits, &c.

XI.—Of the Digest and its Division.

In the year A. D. 529, Tribonian, and seventeen other jurists, by order of Justinian, gave the digest, composed of the best decisions, given on all matters by ancient jurists. That collection was divided into fifty books.

XII.—Of the Institutes.

While these seventeen jurists were progressing in the compilation of the digest, Justinian directed three of them to make a smaller work, to prepare those who afterwards would undertake the study of the laws. That work is divided into four books, which were promulgated, the 11th of the *Calends* of December, A. D. 529.

The first book gives the definition of justice, jurisprudence, law, state of persons, tutorship and curatorship.

The second of property and things, their division, different ways of acquiring, obligations, of heirs, successions, wills, degrees of relationship, stipulations, obligations, their causes, of contracts, having a specific denomination, *contrats nommés*, and of those having no specific denomination, *contrats innommés*.

XIII.—Of the Code as corrected, and of the Novels.

The success which had accompanied the promulgation of the institutes, engaged Justinian to cause the code to be corrected. Five of the jurists who had been em-

ployed in the redacting of the first code, at the head of whom was still Tribonian, suppressed some of the constitutions contained in the first as superfluous, and added to it a few others given by Justinian, since the compilation of the other, together with fifty decisions that this emperor had given to make more clear and certain many points of jurisprudence which had remained undecided. Such was the last compilation of the Roman laws, which still make part of the jurisprudence of almost all nations of the world.

CHAPTER XV.

GOTHIC LAWS.

I. Of the Celtic, Germanic and Gothic Nations. II. The Druids. III. Their Sacrifices. IV. Their Doctrines. V. Authorities. VI. The Bards. VII. Political Laws. VIII. Lord and Vassal. IX. Homage.

I.—Of the Celtic, Germanic, and Gothic Nations

Their religion was that of the druids, who adored, under different appellations, the same gods as the Greeks and Romans. Apollo, Mars, Jupiter, and Minerva were severally worshipped; but to Mercury, as the inventor of the useful arts, they paid a more particular veneration.(1) To these superior gods, they added, like other polytheists, a multitude of local deities, the genii of the woods, rivers and mountains.(2) Some fanciful writers have pretended that they rejected the use of temples through a sublime notion of the divine immensity: perhaps the absence of such structures may, with more probability, be referred to their want of architectural skill. On the oak they looked with peculiar reverence. This monarch of the forest, from its strength and durability, was considered as the most appropriate emblem of the divinity.(3) The tree and its productions were deemed holy: to its trunk was bound the victim destined for slaughter; and of its leaves were formed the chaplets worn at the time of sacrifice.(4)

II.—The Druids.

The druids were accustomed to dwell at a distance from the profane, in huts or caverns, amid the silence and gloom of the forest. There, at the hours of noon

(1) Cæs. vi. 15, 16.

(2) Cild. ii. Many of these local deities are named in inscriptions which still exist.

(3) Max. Tyr. Dissert. xxxviii. p. 87.

(4) Plin. xvi. 44.

or midnight, when the deity was supposed to honour the sacred spot with his presence, the trembling votary was admitted within the circle of lofty oaks to prefer his prayer and listen to the responses of the minister.(1)

III.—*Their Sacrifices.*

In peace they offered the fruits of the earth: in war they devoted to the god of battles the spoils of the enemy. The cattle were slaughtered in his honour: and a pile formed of the rest of the booty was consecrated as a monument of his powerful assistance.(2) But in the hour of danger or distress human sacrifices were deemed the most efficacious.

Impelled by a superstition which had steeled all the feelings of humanity, the officiating priest plunged his dagger into the breast of his victim, whether captive or malefactor; and from the rapidity with which the blood issued from the wound, and the convulsions in which the sufferer expired, presumed to announce the future happiness or calamity of his country.(3)

IV.—*Their Doctrines.*

To the veneration which the druids derived from their sacerdotal character, must be added the respect, which the reputation of knowledge never fails to extort from the ignorant. The great objects of the order were, according to themselves, "to reform morals, to secure peace, and to encourage goodness:" and the following lesson, which they inculcated to the people, was certainly conducive to those good ends: "The three first principles of wisdom are, obedience to the laws of God, concern for the good of man, and fortitude under the accidents of life."(4) They also taught the immortality of the human soul; but to this great truth they added the absurd fiction of metempsychosis.(5)

V.—*Their Authority.*

It will not excite surprise that men, whose office and pretended attainments raised them so much above the vulgar, should acquire and exercise the most absolute dominion over the minds of their countrymen. In public and private deliberations of any moment, their opinion was always asked, and was generally obeyed. By their authority, peace was preserved: in their presence, passion and revenge were silenced; and at their mandate contending armies consented to sheathe their swords. Civil controversies were submitted to their decision; and the punishment of crimes was reserved to their justice. Religion supplied them with the power to enforce submission. Disobedience was followed by excommunication; and from that instant the culprit was banished from their sacrifices, cut off from the protection of the laws, and stigmatized as a disgrace to his family and country.(6)

(1) Mela, iii. 243. Luc. i. v. 453, iii. v. 399, 423. Tac. Ann. xiv. 30.

(2) Cæs. iv. 16.

(3) Diod. Sic. v. 354. Tac. Ann. xiv. 30. Cæs. vi. 15. Plin. xxx. 1. Strab. iv. 108.

(4) These two triads may be seen in Davis (Celt. Researches, 171, 182).

(5) Cæs. vi. 13. Mel. iii. 243. Diod. Sic. v. 352. Strabo, iv. 107.

(6) Cæs. vi. 12. Diod. Sic. v. 254. Strabo, iv. 197. Dio. Chrys. orat. xlix. p. 538.

VI.—Their Bards.

As the druids delivered their instructions in verse, they must have had some notion of poetry, and we find among them a particular class distinguished by the title of bards.

The bard was a musician as well as a poet, and he constantly accompanied with his voice the sounds of his harp. Every chieftain retained one or more of them in his service. They attended in his hall, eulogised his bounty and his valour, and sang the praises and the history of their country. At the festive board, in the hour of merriment and intoxication, the bard struck his harp, and every bosom glowed with admiration of the heroes whom he celebrated, and of the sentiments which he aimed to inspire. He accompanied the chief and his clan to the field of battle: to the sound of his harp they marched against the enemy; and in the heat of their contest animated themselves with the hope that their actions would be renowned in song, and transmitted to the admiration of their posterity.(1)

VII.—Political Laws.

Of these the most important, and that which formed the groundwork of all the rest, may be discovered among the Germans in the age of Tacitus. From him we learn that every chieftain was surrounded by a number of retainers, who did him honour in time of peace, and accompanied him to the fight in time of war. To fight by his side they deemed an indispensable duty; to survive his fall an indelible disgrace.(2) It was this artificial connexion, this principle which reciprocally bound the lord to his vassel, that held together the northern hordes, when they issued forth in quest of adventures. They retained it in their new homes; and its consequences were gradually developed, as each tribe made successive advances in power and civilization. Hence sprang the feudal system with its long train of obligations, of homage, suit, service, purveyance, reliefs, wardships, and scutage.

VIII.—Lord and Vassal.

The artificial relation between the lord and his vassel was accurately understood, and its duties were faithfully performed both by the Gauls and Anglo-Saxons. When Cynewulf, a Saxon, was surprised in the dead of night at Merton, his *men* refused to abandon, or even survive him: and when on the next morning the eighty-four followers of Cyneheard were surrounded by a superior force, they also spurned the offer of life and liberty, and chose rather to yield up their breath in a hopeless contest, than to violate the fealty, which they had sworn to a murderer and an outlaw.(3) An attachment of this romantic and generous kind cannot but excite our sympathy. It grew out of the doctrine, that of all the ties which nature has formed or society invented, the most sacred was that which bound the lord and the vassal; whence it was inferred that the breach of so solemn an engagement was a crime of the most disgraceful and unpardonable atrocity. By Alfred it was

(1) Diod. Sic. v. p. 354. Athenæus, vi. p. 246. Ammian. Mar. xv. 24. Strabo, iv. 197.

(2) Tac. Germ. 13, 14.

(3) Chron. Sax. anno 750, p. 57.

declared inexpiable: the laws pronounced against the offender the sentence of forfeiture and death.(1)

X.—Homage.

It was not, however, an institution which provided solely for the advantage of one party. The obligations were reciprocal. The vassal shared with his fellows in the favours of his lord, and lived in security under his protection. It was a contract, cemented by oaths, for the benefit of each. "By the Lord," said the inferior, placing his hands between those of his chief, "I promise to be faithful and true; to love all that thou lovest, and shun all that thou shunest, conformably to the laws of God and man; and never in will or weald (power), in word or work, to do that which thou loathest, provided thou hold me as I mean to serve, and fulfil the conditions to which we agreed when I subjected myself to thee, and chose thy will."(2)

CHAPTER XVI.

CÆSAR'S FIRST INVASION OF BRITAIN.

I. Of the Britons. II. Origin of the Britons. III. Their Manners. IV. Their Religion. V. Government of the Britons. VI. Fate of Caractacus. VII. Reduction of Anglesey. VIII. Britons abandoned by the Romans. IX. The Natives invite the Saxons.

I.—Of the Britons.

For our first acquaintance with the history of Britain, we are indebted to the pen of a Roman general. Julius Cæsar, in the short space of three years, had conducted his victorious legions from the foot of the Alps to the mouth of the Rhine. From the coast of the Morini he could descry the white cliffs of the neighbouring Island: and the conqueror of Gaul aspired to the glory of adding Britain to the dominions of Rome. The refusal of the Gallic mariners to acquaint him with the number of the inhabitants, their manner of warfare, and their political institutions; and the timidity of Volusenus, who, though he had been sent to procure information had returned without venturing to approach the island, served only to irritate his curiosity, and to inflame his ambition. The Britons, by lending aid to his enemies, the Veneti, had supplied him with a decent pretext for hostilities: and on the twenty-sixth of August, in the fifty-fifth year before the Christian era, Cæsar

(1) Chron. Sax. 58. Leg. Sax. p. 33; 34, 35, 142, 143. Even the word vassal seems to have been known in England as early as the reign of Alfred. Asser, his instructor, calls the thanes of Somerset, nobibiles vasalli Sumertunensis plegæ. Asser, 33.

(2) Leg. 401. 50. 63. Brompt. 859.

sailed from Calais, with the infantry of two legions. To cross the strait was only the work of a few hours: but, when he saw the opposite heights crowned with multitudes of armed men, he altered his course, and steering along the shore, cast anchor before the spot which is now occupied by the town of Deal. The natives carefully followed the motions of the fleet, urging their horses into the waves, and by their gestures and shouts, bidding defiance to the invaders. The appearance of the naked barbarians, and a superstitious fear of offending the gods of this unknown world, spread a temporary alarm among the Romans: but after a short pause it was dispelled, by the intrepidity of the standard-bearer of the tenth legion; who, calling on his comrades to follow him, leaped with his eagle into the sea. Detachments instantly poured from the nearest boats: the beach, after a short struggle, was gained; and the untaught valour of the natives yielded to the arms and discipline of their enemies.

II.—*Origin of the Britons.*

The Britons as also the principal nations of Europe are shewn, from the radical difference in their languages, to be descended from the three great families of the Celtæ, Gothi, and Sarmatæ: and from the countries which they have successively occupied, it appears that the Celtæ were the first who crossed the limits of Assia into Europe; that as the tide of population continued to roll towards the west, they were pushed forward by the advance of the Gothic nations; and that these in their turn yielded to the pressure of the tribes of the Sarmatæ.

III.—*Their Manners.*

By the Roman writers all the natives of Britain are indiscriminately denominated *barbarians*, a term of indefinite import, which must vary its signification with the subject to which it is applied. Though far removed from the elegance and refinement of their invaders, the Belgic tribes of the south might almost claim the praise of civilization in comparison with their northern brethren. Their dress was of their own manufacture. A square mantle covered a vest and trowsers, or a deeply plaited tunic of braided cloth: the waist was encircled with a belt: rings adorned the second finger of each hand, and a chain of iron or brass was suspended from the neck.(1)

Their huts resembled those of their Gallic neighbours. A foundation of stone supported a circular wall of timber and reeds; over which was thrown a conical roof, pierced in the centre for the twofold purpose of admitting light, and discharging the smoke.(2) In husbandry they possessed considerable skill. They had discovered the use of marl as a manure: they raised more corn than was necessary for their own consumption: and to preserve it till the following harvest, they generally stored it in the cavities of rocks.(3) But beyond the borders of the southern tribes, these faint traces of civilization gradually dissappeared. The midland and western nations were unacquainted with either agriculture or manufacture. Their riches consisted in the extent of their pastures, and the number of their flocks. With milk and flesh

(1) Plin. viii. 48. xxxiii. 1. Dio Nic. in Nerone, p. 169. Whitaker's Manchester, vii. 5.

(2) Cæs. v. 12. Diod Sic v. p. 347 Strabo, iv. 197.

(3) Plin. Hist. Nat. xvii. 6. 8. Diod. Sic. v. p. 347.

they satisfied the cravings of hunger ; and, clothed in skins, they bade defiance to the inclemency of the seasons.(1) But even sheep were scarcely known in the more northern parts ; and the hordes of savages, who roamed through the wilds of Caledonia, often depended for support on the casual produce of the chase. They went almost naked : and sheltered themselves from the weather under cover of the woods, or in the caverns of the mountains. Their situation had hardened both their minds and bodies. If it had made them patient of fatigue and privation, it had also taught them to be rapacious, bloody, and revengeful. When Severus invaded their country, the Roman legions were appalled at the strength, the activity, the hardihood, and ferocity of these northern Britons.(2)

IV.—*Their Religion.*

The religion of the natives was that of the druids, whether it had been brought by them from Gaul, as is the more natural supposition, or, as Cæsar asserts, had been invented in the island.

V.—*Government of the Britons.*

The form of government adopted by the British tribes has scarcely been noticed in history. In some, the supreme authority appears to have been divided among several chieftains ; in most, it had been intrusted to a single individual ; but in all, the people continued to possess considerable influence.

We are told that the Britons were quarrelsome, rapacious, and revengeful ; that every nation was torn by intestine factions ; and that pretexes were never wanting to justify oppression, when it could be committed with impunity.(3) It was this rancorous hostility among themselves which accelerated their subjugation to the power of Rome. "There is not," says Tacitus, "a more fortunate circumstance than that these powerful nations make not one common cause. They fight single and unsupported, and each in its turn is compelled to receive the Roman yoke."(4)

Such were the Britons, who by their bravery and perseverance baffled the attempts of the first, and the most warlike of the Cæsars. From that period to the reign of Claudius, during the lapse of ninety-seven years, they retained their original independence.

VI.—*Fate of Caractacus.*

Caractacus was the most celebrated and the last of their chiefs. His fame had already crossed the seas ; and the natives of Italy were anxious to behold the man who had braved for nine years the power of Rome. As he passed through the imperial city, he expressed his surprise that men, who possessed such palaces at home, should deem it worth their while to fight for the wretched hovels of Britain. Claudius and the empress Agrippina were seated on two lofty tribunals ; the pretorian guards stood on each side ; and the senate and the people had been invited

(1) Cæs. v. 14.

(2) Mela, iii. p. 264. Dio Nie. in Severo, p. 340. Herodian, iii. 47.

(3) Maxime imperitandi cupidine, et studio prolatandi ea quæ possident. Mela, iii. 205. Tacit. Agric. xii.

(4) Tacit. Agric. xii.

to witness the spectacle. First were borne the arms and the ornament of the British prince; next followed his wife, daughter, and brothers, bewailing with tears their unhappy fate; lastly came Caractacus himself, neither dispirited by his misfortunes, nor dismayed at the new and imposing spectacle. Claudius, to his own honour, received him graciously, restored him to liberty, and, if we may credit a plausible conjecture, invested him with princely authority over a portion of conquered Britain. The event was celebrated at Rome with extraordinary joy. By the senate the captivity of Caractacus was compared to the captivity of Perses and Syphax: by the poets, Claudius was said to have united the two worlds, and to have brought the ocean within the limits of the empire.(1)

VII.—Reduction of Anglesey.

The isle of Anglesey, the nursery and principal residence of the druids, had hitherto offered a secure retreat to those priests, to whose influence and invectives was attributed the obstinate resistance of the Britons. To reduce it, Suetonius ordered his cavalry to swim across the strait, while the infantry should pass over in boats. On their approach to the sacred isle, they beheld the shore lined not only with warriors, but with bands of male and female druids. The former, with their arms outstretched to heaven, devoted the invaders to the god of war; the latter, in habits of mourning, with their hair floating in the wind, and lighted torches in their hands, were running in all directions along the beach. The Romans were seized with a superstitious horror. For a moment they refused to advance: shame and the reproaches of their leader urged them to the attack. The victory was easy and bloodless. On that day the power of the druids received a shock from which it never recovered. Their altars were overturned; their sacred groves fell beneath the axe of the legionaries; and their priests and priestesses were consumed in the flames, which they had kindled for the destruction of their captives.(2)

VIII.—Britain abandoned by the Romans.

About the year A. M. 400, the great fabric of the Roman power was shaken to its foundation. Hordes of barbarians, under different denominations, issuing from the unknown regions of the east and the north, had depopulated the fairest of the provinces; and a torrent of Goths, Vandals, and Alans, under the celebrated Alaric, had poured from the summit of the Julian Alps into the flourishing plains of Italy. It became necessary to recall the troops from the extremities to defend the heart of the empire; and the cohorts which had been stationed along the walls in Britain, fought and triumphed under the command of Stilicho in the bloody battle of Pollentia.(3) After the retreat of Alaric the British forces seem to have returned to the island, and to have driven back the Picts, who had taken advantage of their absence to plunder the neighbouring province.

The natives, left without a military force, and exposed to the inroads of their enemies, determined to reject an authority which was unable to afford them pro-

(1) Tacit. Ann. xii. 31—36.

(2) Tacit. Ann. xiv. 29, 30.

(3) Compare Gildas, c. 12, and Bede i. 12, with Claudian (De laud. Stilic. ii. ver. 217).

tection. They deposed the Roman magistrates, proclaimed their own independence, took up arms, and with the spirit of freemen, drove the barbarians out of their territories.(1) When the intelligence reached Ravenna, Honorius, the legitimate emperor, wrote to the states of Britain, "to provide for their own defence." By this ambiguous expression he has been thought to have released them from their allegiance: perhaps his only object was to authorize their present efforts, that he might thus reserve a claim to their future obedience.(2)

IX.—The Natives invite the Saxons.

Soon after the Britons had asserted their independence, the greater part of Europe was depopulated by the two dreadful scourges of pestilence and famine. This island did not escape the general calamity: and the Scots and Picts seized the favourable moment for the renewal of their inroads. The dissensions of the native chieftains facilitated their attempts: district after district became the scene of devastation, till the approach of danger admonished the more southern Britons to provide for their own safety. Some solicited, but in vain, the protection of Ætius, the Roman general in Gaul;(3) others, under the guidance of Vortigern, the most powerful of the British kings, had recourse to an expedient, which, however promising it might appear in the outset, proved in the result most fatal to the liberty of their country. The emperors had long been accustomed to purchase the services of the barbarians; and the Armoricans, who, like the Britons had thrown off the Roman yoke, had, with the assistance of the Saxons, successfully maintained their independence.(4) Vortigern resolved to pursue the same policy. A Saxon squadron of three chiules, or long ships, was cruising in the channel in quest of adventures, and its two commanders, the brothers Hengist and Horsa, eagerly accepted the overtures of the British prince, to aid in fighting his battles, and to depend for their reward on his gratitude. They landed at Ebbsfleet, and were cantoned in the isle of Thanet.(5)

They soon turned their arms against the Britons themselves, who, however, did not tamely submit. On one occasion Germanus, a Gallic prelate, resumed a character, in which he had distinguished himself during his youth. A party of Picts and Saxons were plundering the coast: he put himself at the head of the Britons, and led them to a defile, where they awaited in ambush the approach of the invaders. On a sudden by his command they raised a general shout of Hallelujah: the cry was reverberated from the surrounding hills: the enemy fled in amazement, and numbers perished in an adjoining river. By ancient writers this action was celebrated under the name of the Hallelujah victory.(6) It was the last of the Britons.

(1) Zosim. vi. 376.

(3) Gild. c. xvi. xvii. xxi.

(5) Gild. c. xxiii. Nen. xxviii.

(6) Prosp. in Chron. p. 630, ad. ann. 429. Constan. vit. S. Ger. c. l. 28. Bad. i. 17. Hunt. 178. See Lingard, p. 81, 83, 84, 85.

(2) Id. 318.

(4) Sid. Apol. Paneg. Avit. v. 369.

CHAPTER XVII.

GENERAL PRINCIPLES OF THE LAWS OF ENGLAND.

I. Introduction. II. Common Law. III. Lex non Scripta. IV. Civil Law. V. Canon Law. VI. Statute Law. VII. Saxon Laws. VIII. Saxon Law-givers. IX. Condition of the Saxon People. X. State of Landed Property. XI. Thainland. XII. Origin of the Feudal System. XIII. Bockland. XIV. Folkland. XV. Descents. XVI. Alienation. XVII. Testaments. XVIII. Method of Conveyance.

I.—Introduction.

ABOUT the middle of the second century the Saxons, an obscure tribe of barbarians, occupied the district between the Elbe and the Eyder on the neck of the Cimbrican Chersonesus;(1) in the course of two hundred years the same appellation had become common to all the nations from the extremity of the peninsula to the Weser, the Ems, and the Rhine.(2) They formed a kind of voluntary association, which was loosely held together by similar interests, and congenial pursuits. Pillage by land, piracy by sea, was their only profession; and though the imperial fleet had often been employed to check, it could never subdue their dauntless and enterprising spirit. But as the power of Rome declined, the audacity of the Saxons increased: their expeditions became more frequent, their descents more destructive: from plunder they proceeded to colonization; and the men who had depopulated, afterwards re-peopled the better portion of Britain. Adventurers from each of the associated tribes were among the colonists; but the majority consisted of Jutes, Angles, and Saxons properly so called.(3) The original seat of the Saxons has already been mentioned: the Angles were their neighbours on the north as far as the site of the present town of Flensburgh: and beyond the Angles dwelt the nation of the Jutes, with no other boundary than the ocean.

From the language of the Saxons, their gigantic stature and national institutions, it is evident that they were of Gothic descent. Their whole time was alternately devoted to indolence and rapine. To earn by labour what might be acquired by force, they deemed unworthy the spirit of a freeman, and consigned the culture of their land with the care of their flocks to the meaner labour of women and slaves. Every warrior attached himself to the fortunes of some favourite chieftain, whom he followed in his piratical expeditions. These chieftains guided the councils of the tribe; and from them, in times of danger, was selected a leader, who exercised

(1) Ptol. in 4^o Europæ tab.

(3) Bed. 1, 15. Ethelwerd, Chron. 1, p. 476.

(2) Eutrop. ix. p. 659.

the supreme command, and was dignified with the title of conyng, or king. His authority, however, was but temporary. It expired with the exigency to which it owed its existence.(1)

The warlike exertions of these tribes were at first checked by their want of arms: but during three centuries of intercourse or hostility with the Romans, they had learned to supply the deficiency. They bore a target on the left arm, and employed for offence the spear, the sword, and the battle-axe. The two latter were long and ponderous; and to their destructive effects is attributed the havoc, which the Saxons never failed to make in the broken ranks of an enemy.(2) As their ships were not fitted for the transportation of cavalry, they usually fought on foot in one compact body; but after their settlement in Britain, the chieftains, with the most wealthy of their retainers, came mounted into the field. Their esteem for the war-horse rose to a species of veneration; but previously to his initiation, his nostrils were slit, his ears were stitched up, and his sense of hearing was entirely destroyed. From that moment he became sacred to the god of war, and was conceived on important occasions to announce the will of the deity.(3)

In the infancy of their naval power the Saxon boats resembled those of the other northern tribes; and a few planks surmounted with works of osier and covered with skins, bore the fearless barbarian across the ocean, in the search of spoil and adventures. But in the fifth century their chiuks, or war-ships, had assumed a more formidable appearance: and from the number of warriors whom they carried, and the length of the voyages which they made, we may conclude that they were formed of more solid and lasting materials. In these the Saxons repeatedly issued from their ports, sometimes steering for a particular point, sometimes trusting entirely to the guidance of the winds; but whether they were conducted by chance or design the object was invariably the same, to surprise and pillage the unoffending inhabitants on some parts of the British or Gallic coasts. Sidonius, the eloquent bishop of Clermont, has described in animated language the terrors of the provincials and the ravages of the barbarians. "We have not," he says, "a more cruel and more dangerous enemy than the Saxons. They overcome all who have the courage to oppose them. They surprise all who are so imprudent as not to be prepared for their attack. When they pursue, they infallibly overtake: when they are pursued, their escape is certain. They despise danger: they are inured to shipwreck: they are eager to purchase booty with the peril of their lives. Tempests, which to others are so dreadful, to them are subjects of joy. The storm is their protection when they are pressed by the enemy, and a cover for their operations when they meditate an attack. Before they quit their own shores, they devote to the altars of their gods the tenth part of the principal captives; and when they are on the point of returning, the lots are cast with an affectation of equity, and the impious vow is fulfilled."(4)

Upon the establishment of the Saxons and Angles in South Britain, after the year 450, the whole of that part of the island was divided into the seven following kingdoms, viz:—

(1) Huntingd. 178, 181.

(3) Sidon. viii. 6.

(4) Bed. v. 10. Wittich. i. p. 7.

(2) Wilk. Con. i. 150.

1. Kent, founded by Hengist in 455: it terminated in 823. 2. Sussex, or the South Saxons, was founded by Ella in 491, and ended about the year 600. 3. East Angles, founded by Uffa in 751, and ended in 792. 4. Wessex, or West Saxons, founded by Cerdic in 519, and ended about 1012. 5. Northumberland, established by Ida in 547, and ended in 827. 6. Essex, or the East Saxons, founded by Ereenwin in 527, and ended in 810. 7. Mercia, founded by Crida in 584, and ended in 824. This was frequently united with Deira.

The laws of England may be divided into four distinct branches or heads: the common law, civil law, canon law, and statute law.

II.—Common Law.

What is called common law consists of a collection of customs and maxims, which derive their binding power, and the force of laws, from long and immemorial usage, coupled with the express sanction, or the tacit consent, of the legislature.(1)

III.—*Lex non Scripta*.

One of the most remarkable designations of the common law was that of *lex non scripta*, which it derives from its own nature, because there are no records extant to show its legislative enactment, it being one of its peculiar perfections, that it has been in use time out of mind, or, in the solemn language of the law, time whereof the memory of man runneth not to the contrary. The common laws of England, says Lord Chancellor Ellesmere, are grounded upon the law of God, and extend themselves to the original law of nature, and the universal law of nations, and are not originally *leges scriptæ*.(2)

IV.—Civil Law.

By the civil law is to be understood the civil and municipal law of the Roman empire, which, owing to peculiar circumstances, was first partially admitted into England, and finally established so as to form a branch of the jurisprudence.(3)

V.—Canon Law.

The canon law is a body of ecclesiastical laws, originally compiled from the decrees of councils, bulls, and decretal epistles of the Holy See, and the opinions of the ancient fathers, which were digested by Gratian, under the title of *Decretum Gratiani*; to these were added, the *Decretalia* of Gregory IX., the *Sextus Decretalium* of Boniface VIII., the *Extravagantes* of John XXII., and the *Extravagantes Communes* of later popes; comprising the whole *corpus jnr is canonica*—(body of canon law). Some parts of this law were adopted at an early period by the Saxons, but far the greater part was introduced at the same time with the civil law, as will be more particularly noticed in its proper place.(4)

VI.—Statute Law.

The statute law is the last branch of law which enters into the composition of English jurisprudence. A statute is any act of the legislature which serves as a

(1) Hale's Hist. Common Law, c. 1.

(2) Ellesmere Disc. on the Postnati.

(3) See page 80.

(4) A. D. 1151. 1230. 1298. 1349.

rule for the conduct of the community, in which sense all the public acts or laws of the Saxon kings were statutes ; but in a restricted sense, a statute signifies any thing which was *statutum*, decreed, or determined by the king's majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in parliament assembled.

Statutes are either declaratory or confirmatory of the common law, or they serve to abridge or enlarge the common law, or altogether to introduce a new law. Most of the old acts, such as Magna Charta, the statute of Marlbridge, Merton, &c., are for the most part confirmatory of the common Law, and on that account the more valuable, because they thereby serve to prevent good laws and customs from falling into desuetude. Modern statutes, on the other hand, are for the most part introductory of some new law or regulation ; and being framed with a view to diminish as much as possible the discretionary power of those by whom they are administered, they are remarkable for their number, their prolixity, and oftentimes for their incorrectness and want of clearness.(1)

The statute commencing with Magna Charta, and ending with those of Edward II., including such as are of incertain date, have been distinguished by the title of the *Vetera Statuta*. Hitherto they had been mostly named from the place where the parliament was held, or the statute passed, as the statute of Merton and Marlbridge ; the statutes of Westminster, first, second, and third ; the statutes of Gloucester, Carlisle, Lincoln, Acton, Burnet ; and others were denominated from the subject matter of them ; as the statute of Ireland and Wales, the statute of essoins, of vouchers, of sheriffs, *confirmacione chartarum*, *Prerogatea Regis de Melibus* ; others distinguished by initial words, as *Quia Emptores*, *Cerconspectu agatis* ; some few under Edward II. are distinguished by the year of the king's reign, which is at present the usual mode of citing statutes. In a collective sense, those passed before the union with Ireland in 1801, are called English statutes, since that union, statutes of Great Britain and Ireland, and after the union with Scotland, imperial statutes.

VII.—Saxon Law.

The common law is of such antiquity, that it was coeval with the first peopling of Great Britain. From the earliest records of Saxon times may be traced many of the rules and principles of law which are acknowledged in the present day ; as the jurisdiction and proceedings of courts, the distribution of powers and offices among the ministers of justice, and the like. Among the Saxon kings there was a series of lawgivers whose codes, then occasionally distinguished by the name of dombocks, are still extant, and present us with the outlines of that scheme of English jurisprudence which afterwards obtained a footing. These codes contain little more than a brief abstract of laws, or general rules, for the guidance of the judges or magistrates, the details being left to be decided either by their discretion, or by the known customs of the place.(2)

(1) A. D. 1215. Co. 2 Inst. passim.

(2) LL. Wiht. & Edw. Sen. opud Wilk. 48.

VIII.—*Saxon Lawgivers.*

The first of these codes, which is also said to be the oldest in Europe, was that of Ethelbert, who began to reign A. D. 561; his was followed by the codes of Hlothaire, Edric, and Wiltred, all kings of Kent, and of Ina, king of the West Saxons; after which we have the laws of Alfred the Great, Edward the Elder (his son) Athelstan, Edmund, Edgar, Ethelred Canute, and Edward the Confessor. Alfred, the most celebrated of the Saxon legislators, not only embodied the laws of his country into a regular form, but did more than any other king towards their observance. By the wisdom of his regulations and political institutions, he acquired the title of Conditor Legum Anglicanarum, (the founder of English law), as did Edward the Confessor acquire that of Restitutor Legum Anglicanarum, (the restorer of the English law), on account of the completeness of the collection which he formed of all the laws then in force throughout England.(1)

IX.—*Condition of the People.*

The Saxon people were divided into freemen and slaves. The freemen were again divided into *eorls* earls, *thanes* and *ceorls* or husbandmen. The *eorls* were civil officers superior in dignity to the thanes, as appears from the different heriots required from them by law of Canute. The heriot of the earl was eight horses, that of the thane four horses, besides other things in proportion. The thanes were properly the feudal lords or nobles, so called from the Saxon *thenian*, to serve, because they were bound to do special service for their lords and attend upon the king when required. They were distinguished into the *thuni majores*, in Saxon properly *thegen*, who were immediately in the service of the king, and the *thuni minores*, in Saxon *theoden*, who were in the service of the higher thanes. The *ceorls* were the farmers or husbandmen, to whom the cultivation of the land was assigned. The slaves were either domestic slaves, who performed the various offices of the house in the families of their master, or they were employed in the labours of the field, and were on that account called *villani* villeins, because they lived in the vills or villages. These slaves or villeins were in the lowest state of degradation, being considered as the property of their owners. In the laws of Wales it is expressly said, that the master had the same right to his slaves as to his cattle. There was another description of persons, namely *frilazin* or freedmen, who had been emancipated from their bondage; but their condition was very little better than that of the villeins.(2)

X.—*State of Landed Property.*

Whether the landed property of the Saxons was subject to the feudal laws, and to what extent, has been a matter of much controversy, which owing to the scanty information to be gathered from the records of those times, can never be positively decided. The legal historian must, therefore content himself with stating authentic facts, and leave the reader to draw his own conclusions.

(1) Ran. Cest. 1, 1, c. 50 Lib. Ramens, sec. 5; Gemittien, 1, 6, c. 9.

(2) I.L. Can. c. 69. Jud. Civ. Lond. apud. Wilk. 71. Spelm. Feud and Ten. c. 5. Spelm in Voc.

XI.—Thainland.

The lands of the Saxons were divided into thainland, bockland, and folkland. Thainland was that which was granted by the Saxon kings to their thains, or thanes, who were properly such as attended at court, and held their land immediately of the king, the term thane being as before observed, in the first instance, a title of office, although it afterwards became one of dignity: of these lands the thanes reserved a portion for the support of their household, called inlands, which were cultivated by their villeins: the rest called outlands, they let out to the ceorls for a certain rent, and in all probability for the same sort of services as were required of the thanes from the king. The thainlands were distinguished by the name of baronies, and other appellations after the conquest.

When lands held by the thanes reverted to the crown, it appears they were called revelands, because they fell under the immediate government of the king's officer, the reve, or sheriff.(1)

XII.—Origin of the Feudal System.

The origin of the feudal system is commonly traced from the Lombards and other northern nations, who, on the decline of the empire, made irruptions into different parts of Europe, and obtained from their kings or leaders allotments of land in the countries where they settled, which the possessors again parcelled out into smaller allotments to their inferiors. This practice of granting lands on condition of military service appears to have been adopted by the Roman emperors; for we learn from Lampridius, that Alexander Severus gave to the officers and soldiers stationed on the frontiers the lands that were taken from the enemy, to be theirs on condition that they and their heirs should do military service; and Probus made similar grants to the veterans in Isauria, requiring that their sons, from the age of eighteen and upwards, should serve in the army. These barbarians were, therefore, rather the imitators than the introducers of a practice, which suited well with their circumstances as the settlers in a new country.(2)

XIII.—Bockland.

Bockland or bookland, the next species of landed property among the Saxons, was that which was held by charter or deed, and answered to what was afterwards called freehold. This was occupied by the ceorls, who were the free or soccage tenants of the thanes.(3)

XIV.—Folkland.

Folkland, in Latin *terra popularis*, the last species of landed property, was holden at the will of the lord without any deed, and mostly occupied by the degraded class of men. From this last sort of estate sprung what has since been termed copyhold land.(4)

(1) Spelm. Orig. of Fuds. c. 5. Spelm. c. 25. Spelm. Feuds. c. 24. Spelm. Feuds, and Ten. c. 8.

(2) Murator. Anti. Ital. Diss. 10 547. Lamprid. Vit. Severus. Seld. Tit. of Hon. c. 1. s. 23 Duck de Us. Jur. Cir. I. I. c. 6.

(3) Spelm. Feuds and Ten. c. 5.

(4) Spelm. Feuds ubi supra.

XV.—Descents.

The lands of the Saxons descended for the most part equally to all the males, without any right of primogeniture, of the custom of kavelkind in Kent is still a vestige. The same was the case if they were all daughters; but if there were sons and daughters, it is probable that, after the manner of the Saxons on the continent, they did not share alike. By the laws of Wales a daughter received but half a son's portion.(1)

XVI.—Alienation.

Alienation was, by a law of Alfred, so far restricted, that no one could dispose of inheritable property contrary to the will of the original purchaser.(2)

XVII.—Testaments.

Testaments were not in use among the ancient Germans, but probably came into use soon after the introduction of Christianity, for we read of testaments as early as the reign of Alfred. In the form and manner of making wills, as also in the mode of disposing of lands and goods, the Saxons appear to have observed the rules of the civil law. Æthelwolf, in imitation of Charlemagne, divided his lands by will between his three sons; and Alfred, his youngest son, did the same, as appears from his will, which is still extant.(3)

XVIII.—Method of Conveyance.

A legal transfer of lands might be made among the Saxons without any deed or writing, but in lieu thereof by certain ceremonies, as that of holding by the horn, by the arrow, and the like. Thus Edward the Confessor granted to the monks of St. Edmund's Bury in Suffolk the manor of *Brok per cultellum*. Nevertheless deeds were not altogether unknown to the Saxons, by whom they were generally denominated *gewrite*, writings. The particular deed by which an estate was conveyed was termed a *land-boc*, whence the land was denominated boc-land. For the ratification of deeds it was usual to have them read in the county court in the presence of the assembly, by whom they were attested, by the signature of their names, as well as that of the parties.(4)

(1) Lindenb. Cod. Antiq. 476.

(2) LL. Alf. c. 37.

(3) Tac. de Germ. c. 20. Hicks' Diss. 51.

(4) Ingulph. Hist. Croyl. 901.

CHAPTER XVIII.

THE SAXONS.

I. Division of the Country. II. Counties. III. Earl. IV. Hundreds. V. Tithings. VI. Friburg or Frank-pledge. VII. Tilthingman. VIII. Ecclesiastical State. IX. Union of the Secular and Ecclesiastical Powers. X. Tithes. XI. Military State. XII. Administration of Justice. XIII. Officers of Justice. XIV. Alderman. XV. Gerefa or Reve. XVI. Courts or Justice. XVII. Folcmote. XVIII. Hallmote. XIX. Hundred Gemote. XX. Seyregemote. XXI. Witenagemote.

I.—Division of the Country.

AMONG the regulations ascribed to Alfred for the establishment of order and government, was that of dividing England into counties, and these into hundreds and tithings. But although the merit of invention is commonly given to this great prince, it appears that some of these divisions existed before his time, and that to him belongs the honour of having reduced them to order, and rendering them subservient to the purposes of police.(1)

II.—Counties.

The county had existed in France under the name *comté* at an early period, and was so called from the *comle*, *comes*, or earl, by whom it was governed. The comes was an officer of great antiquity in the Roman empire, so named, *à comitendo*, from their attending the emperors, because they were always attached to their persons, and were in their immediate service. When Alfred the Great had got rid of his enemies, he set about new modelling the kingdom, and divided it into more regular and uniform portions, to which he gave the name of *scyre*, shire, from *icyran*, to divide, signifying literally a division. The officer to whom the government of the shire was entrusted was sometimes called an alderman, more properly an earl, which, from the Danish *Jarl*, signified a man or a retainer, or as some think from *ære*, honour signified a dignity.

III.—Earl.

The earl, as respected his office, corresponded altogether with the comes of the Latins, and the comte of the French. He had both a civil and military administration of the country, and acted like the comes, both as a judge and a commander of the forces. In his judicial capacity he was probably styled *aldermann*, and in

(1) Ingulph. Hist. Croy!. 495; Gul. Malms. de Gest. Reg. Angl. 24. A. D. 880.

his military capacity he had the title of *hertock*, from *here*, an army, and *tohen*, to lead, answering to the Latin *dux*, and the French *duc*.(1)

At first the earl had their appointment from the king, and held their office at his pleasure; but from the increasing power of these earls or dukes, and the tacit consent of the sovereign, this office became in process of time hereditary, and sometimes elective, if we may believe the laws ascribed to Edward the Confessor. Among the perquisites enjoyed by the earl was that of the *tertium denarium*, or a third or the profits of fines and penalties imposed at the county court.(2)

IV.—Hundreds.

The hundred, which was a subdivision of a shire, was a name of number, and was at first probably applied to the number of a hundred families or villages. The hundred is mentioned by name in the laws of Ina, and had been introduced into France as early as the reign of Clotaire, under the name of *centena*, for the express purpose of making such district answer the purpose of civil government. Traces of this institution are also to be found among the ancient Germans. The chief man of the hundred was called *centenarius* among the Franks and other nations on the continent, and *hundredarius aldermannus* or *hundredi*, among the Saxon. This officer had likewise both a civil and military duty.(3)

V.—Tithings.

The tithing was a subdivision of the hundred, and, as its name imports, was the tenth part of a hundred. This division is also mentioned in the laws of Ina, but it does not appear that it was connected with the police of the kingdom until the time of Alfred, who, for the prevention of robberies and other offences, required every member of the tithing to be answerable for the good conduct of the rest. So far then as regards the constitution and object of this regulation, Alfred is justly entitled to the praise of being the inventor.(4)

VI.—Friburg or Frank-pledge.

This community was called in the Saxon *friborg*, or *friburg*, that is to say, frank-pledge, from *freo*, free, and *borg*, a pledge, because every free man was a pledge or security for the good conduct of the others.(5)

VII.—Tithingman.

The head man of the tithing was called *friborgsheofod*, or *borghealder*, that is, the elder of the borch; also sometimes *theothungman*, that is, the tithing-man, which afterwards became the common appellation. In Latin the tithing was called *decenna* or *decina*, the members *deconnarii*, and the head man *decanus friborgi*.(6)

(1) Asser. Vit. Alf. Alcuin. in Epist. 35..

[Sax.

(2) Annal. Sax. 49; Spelm. Concil. 1, 190; LL. Edw. Conf. c. 33, apud Wilk. LL. Ang.

(3) Spelm. Gloss. in Voc.; Du Canage, Gloss. in Voc.; Tac. Germ. c. 6.

(4) Spelm. Gloss.; Du Cange, Gloss.; Dugd. Orig. Jur. 23.

(5) LL. Edw. Conf. c. 32.

(6) LL. Edw. ubi *supra*.

The tithing-man had more particularly to answer for the good conduct of the rest; for when any one of the tithing fled on account of any offence, it was his business to assemble the others and to use all possible diligence to produce the offender. If he were not forthcoming, and the tithing could not purge themselves, they were subject to be fined. In order to support this regulation, every one was obliged at the age of twelve to enrol himself of some decennary or tithing, at which period he took an oath to be true and faithful to the king. This oath was afterwards called the oath of allegiance; and the proceeding of administering the oath and examining the state of the decennaries, which took place once a-year, was denominated *visgs franci plegii*, or view of frank-pledge.(1)

This pledging also extended to strangers; so that if any one took a stranger in, and suffered him to stay there three nights, and the stranger committed any crime, the person so harbouring him was considered as having made himself a pledge for him. The person who was entertained for one night was denominated in the Saxon *uncuth*, that is unknown; on the second night *twanight gest*, and on the third night *agenhine*, that is as much as to signify an inmate.(2)

Although the tithing is now fallen into disuse, yet the names of tithingman and headborough are still retained to denote the office of petty constable.(3)

VIII.—Ecclesiastical State.

With these political divisions was connected the ecclesiastical state as it was first established in England. The Saxons having embraced Christianity through the ministry of St. Austin, and other monks sent by Pope Gregory; the Church of England, as to its doctrine and discipline, was framed after the model of the Church of Rome. Canterbury, where the missionaries were first received, A. D. 596, was the first English see, of which St. Austin was consecrated archbishop the next year. London was raised to a bishop's see, and Mellitus chosen the first bishop in 604; York was raised to an archbishopric, and Paullinus placed at its head in 624; and at the time when the venerable Bede closed his history, we are informed that there were sixteen bishops who had their seats at the most important places at that time. Canterbury was always acknowledged to be the metropolitan church of all England, and has continued ever since, notwithstanding the title of the primacy was disputed by some archbishops of York.(4)

IX.—Union of the Secular and Ecclesiastical Powers.

Between the secular and ecclesiastical powers there was at this period a happy union in England, owing to the piety of the Saxon princes and the moderation of the clergy, who were not yet subject to any foreign influence. To the bishop belonged not only the ecclesiastical government of the diocese, but also a considerable share in the civil administration; for the bishop and the earl or alder-

(1) LL. Edg. c. 6; LL. Can. 19; LL. Ed. Conf. c. 32.

(2) LL. Can. c. 25; LL. Edw. Conf. c. 27.

(3) LL. Edw. Conf. c. 34.

(4) Bed. Hist. 1. 1, c. 27, 1. 2, c. 4, &c. A. D. 650.

(5) LL. Edg. c. 5; LL. Can. c. 17; Specim. Rem. 50.

man co-operated for the preservation of the peace and the maintenance of good order.(5)

X.—*Tithes.*

Among the subjects which engaged the attention of those synods, the payment of tithes was frequently considered. The introduction of tithes into England is probably coeval with that of Christianity. Offa, king of Mercia, having set the example of giving the tenth of his goods to the church, the payment of them is enjoined by most of the subsequent kings whose laws are extant. It should seem that, in the commencement, people might pay their tithes to what priests they pleased, which was called the arbitrary consecration of tithes; or they might put them into the hands of the bishop, to be distributed among the clergy; but as this practice afforded a facility to fraud and abuse, it was enacted by a law of Edgar, that the payment of tithes should be confined to the parish to which they belong; from which it may be gathered that England was at this time divided into parishes, and is supposed to have been so from the time of Alfred the Great. Besides tithes, there are other church dues mentioned at that time, as *romscot*, which was probably the same as was afterwards called *Peter-pence*; and *soulscot*, a sort of expiatory offering made by a person at his decease to the church for the good of his soul, which was afterwards called a mortuary or *corse-present*.(1)

XI.—*Military State.*

The military law of the Saxons was similar to that of their German ancestors. All their youth were trained to the use of arms, and every freeman was obliged to be ready to take the field whenever they were called upon so to do. The only persons exempted were the clergy, who, like the priests among the pagans, were prohibited the use of arms; and the slaves who were not allowed the honour of bearing them. That the people might always be furnished with the necessary arms, and expert in the use of them, the freemen of each tithing, hundred, and county, were appointed to meet at certain times and places, for the purpose of going through their exercises, and having their arms inspected; besides which, a general review of all the armed men and arms in the kingdom took place on one and the same day of every year, in the month of May. These regulations, in which we may trace the origin of our present militia, are supposed to have been made by Alfred, and to be coeval with the scheme of political economy which he established. The troops of each division were commanded by the officers or headmen of the respective districts, namely, the counties by the heretochs or dukes, the hundreds by the hundredaries, and the tithings by the tithingmen.(2)

XII.—*Administration of Justice.*

In treating of the administration of justice, there will be further occasion to point out the utility of these divisions. Under this head may be considered the officers of justice, the courts of justice, and the judicial proceedings.

(1) Seld. on Tithes, c. 10; I.L. Edg. c. 2; apud Wilk. 76; LL. Cam. c. 13.

(2) Beg. Ecc. Hist. 1, 2, c. 13; Spelm. Concil. i. p. 238; LL. Edw. Conf. c. 35.

XIII.—*Officers of Justice.*

The two principal officers of justice were the alderman and gerefa.

XIV.—*Alderman.*

The *calderman*, *caldorman*, or *alderman*, that is literally, the eldorman, was like the senator of the Romans, so called *non propter ætatem sed propter sapientiam et dignitatem*—(not on account of his age, but because of his wisdom and dignity). He was an officer of distinction, and the next in rank to an atheling or nobleman. He presided with the bishop at the scyregemote, and was a member of the witenagemote. In the early part of the Saxon history he appears to have sometimes headed the forces of the country, and is said to have been the same as the earl; but, subsequently, his office was purely judicial, and after the conquest was executed by the *justitia* or *justitarius*. He was sometimes styled *cyninges caldermann*, or the king's alderman, because he was specially appointed by the king to administer justice, wherefore it was a penal offence to quarrel or fight in his house, or in his presence. There was likewise an *aldermannus totius Angliæ*—(an alderman of all England), *aldermannus comitatus*, *aldermannus hundredorum*, &c., to denote the difference of rank and jurisdiction.(1)

XV.—*Gerefa or Reeve.*

The *gerefa*, or reeve as he is called in English, was an officer of justice, inferior in rank to an alderman. He was a ministerial officer, who was appointed to execute processes, to keep the king's peace, and to put all the laws into execution. He witnessed all contracts and bargains; brought offenders to justice, and delivered them to punishment; took bail or security of such as were to appear at the scyregemote or county court, and presided at the hundred court and falcote.(2)

XVI.—*Courts of Justice.*

The courts of justice among the Saxons were modelled, according to the divisions of the kingdom, into counties, hundreds, and tithings.(3)

XVII.—*Falcote.*

The lowest of these tribunals, in point of jurisdiction, was denominated a *falcote*, from the words *folc*, people, and *mote* or *gemote*, a meeting or court; that is, literally, an assembly of the people or inhabitants of any tithing or town, who were summoned by a bell, called a mote-bell.(4) This was in the nature of a tithing court, at which the tithingman or *tienheofod*, as he is sometimes called, presided, and settled all small disputes between the neighbours, as matters of trespass in meadows, corn, and the like. But the name of folcote was applied generally to

(1) LL. Edw. Conf. c. 35; Jud. Civ. Lond. apud Wilk. p. 71; In Præf. LL. Alur. c. 44, apud Prompt. Sax. Chron. 48, 78; LL. In. c. 26; LL. Alf. c. 21.

(2) LL. Wiht. apud Wilk. 12; Jud. Civ. Lond. apud Wilk. 69. Ibid 65.

(3) Tacit. Germ. c. 12.

(4) LL. Edw. Conf. c. 35.

all courts which were adapted to the convenience of the people within any district ; thus the hundred court was frequently called by the same name.(1)

XVIII.—*Halmote.*

The *halmote* was the lord's court, so called from *hal*, the hall, where the lord's tenants or freemen met, and justice was administered. This court, which was granted to the thanes as a franchise, had a civil and criminal jurisdiction.(2)

XIX.—*Hundred Gemote.*

The *hundred gemote*, or court of the hundred, was, as its name imports, a court held, for the benefit of the inhabitants of the hundred, every month ; at which the alderman, but more frequently the *gerefa*, presided, and all who were summoned were obliged to attend, on pain of being heavily mulcted.(3) The hundred court was called a *wapentake* in the northern counties ; from the Saxon *wapen*, arms, and *tac*, a touch ; because, when the chief of the hundred entered upon his office, he appeared in the field on a certain day on horseback, with a pike in his hand, and all the principal men met him there with lances ; when he alighted they touched his pike with their lances, as a token of submission to his authority.(4) In this court causes of great moment were heard and determined, as Mr. Dugdale has shown from several records ; besides which, it took cognizance of theft, trials by ordeal, view of the frank-pledge, and the like. Whence, after the conquest, this court was called the sheriff's tourn, and, as regarded the examination of the pledges, the court of the view of frank-pledge.(5)

XX.—*Scyregemote.*

The *scyregemote*, that is, literally, the mote or court of the shire, in Latin *curia comitatus*, was the principal court among the Saxons, which was held twice a-year for the determining of all causes, both ecclesiastical and secular ; the former of which were heard and determined before the bishop, and the latter before the alderman. Appeals were made from the hundred court to the county court.(6)

XXI.—*Witenagemote.*

The last and supreme court in the kingdom was that which was held in the king's *aula* or palace, in which the Saxon kings administered justice in person. This was a court of appeal, where the sentences of inferior judges were reversed or confirmed.(7)

But these occasional courts, respectable as they might be, were eclipsed by the superior splendour and dignity of the "mickle synoths or witenagemots," the great meetings, or the assemblies of the counsellors, which were regularly convened at the festivals of Christmas, Easter, Whitsuntide, and occasionally at other times, as

(1) Spelm. Rem. 50.

(2) LL. Edw. Conf. c. 21, et. seq.

(3) LL. Inæ a pud Spelm. Gloss. in Voc. ; Dug. Orig. 26, LL. Ethel. c. 20 ; LL. Edw. Conf. c. 3.

(4) Dug. Orig. Jur. 27.

(5) LL. Edg. c. 5,

(6) LL. Edg. c. 5 ; LL. Can. c. 17 ; Dug. Orig. Jur. 28.

(7) Sax Chron. passim.

difficult circumstances or sudden exigencies might require. Who were the constituent members of this supreme tribunal, has long been a subject of debate; and the dissertations, to which it have given rise, have only contributed to involve it in greater obscurity. It has been pretended that not only the military tenants had a right to be present, but that the eorls also attended by their representatives, the borgholders of the tithings. The latter part of the assertion has been made without a shadow of evidence, and the former is built on very fallacious grounds. It is indeed probable that, in the infancy of the Anglo-Saxon states, most of the military retainers may have attended the public councils; yet even then the deliberations were confined to the chieftains; and nothing remained for the vassals but to applaud the determination of their lords. But in later times, when the several principalities were united into one monarchy, the recurrence of these assemblies, thrice in every year within the short space of six months, would have been an insupportable burthen to the lesser proprietors; and there is reason to suspect that the greater attended only when it was required by the importance of events, or by the vicinity of the court. The principal members seem to have been the spiritual and temporal thanes, who held immediately of the crown, and who could command the services of military vassals. It was necessary that the king should obtain the assent of these to all legislative enactments; because without their acquiescence and support it was impossible to carry them into execution. To many charters we have the signatures of the witan. They seldom exceed thirty in number; they never amount to sixty. They include the names of the king and his sons, of a few bishops and abbots, of nearly an equal number of ealdormen and thanes, and occasionally of the queen, and of one or two abbesses.(1) Others, the fideles or vassals, who had accompanied their lords, are mentioned as looking on and applauding; but there exists no proof whatever that they enjoyed any share in the deliberations.

The legal powers of this assembly have never been accurately ascertained; probably they were never fully defined. To them, on the vacancy of the crown, belonged the choice of the next sovereign; and we find them exercising this claim not only at the decease of each king, but even during the absence of Ethelred in Normandy. They compelled him to enter into a solemn compact with the nation, before they would acknowledge him a second time as king of England.(2) In ordinary cases their deliberations were held in the presence of the sovereign; and as individually they were his vassals, as they had sworn "to love what he loved, and shun what he shunned," there can be little doubt that they generally acquiesced in his wishes. In the preambles to the Saxon laws the king sometimes assumes a lofty strain. *He* decrees: the witan give their advice. He denominates himself the sovereign: they are *his* bishops, *his* ealdormen, *his* thanes. But on other occasions this style of royalty disappears, and the legislative enactments are attributed to the witan in conjunction with the king.(3) The same diversity appears in treaties concluded with foreign powers. Some bear only the name of the king; in others the witan are introduced as sanctioning the instrument by their concur-

(1) See Ingulf, 32, 44, 45; Gale, iii. 517.
(3) Leg. 14, 34, 48, 73, 102, 113.

(2) Chron. Sax. 145.

rence.(1) In their judicial capacity they compromised or decided civil controversies among themselves ; summoned before them state criminals of great power and connexions ; and usually pronounced the sentence of forfeiture and outlawry against those whom they found guilty.(2) As legislators they undertook to provide for the defence of the realm, the prevention and punishment of crimes, and the due administration of justice.(3)

CHAPTER XIX.

JUDICIAL PROCEEDINGS AMONG THE SAXONS.

I. Judicial Proceedings. II. Ordeal. III. Trial by Compurgators. IV. Trial by Witnesses. V. Criminal Cases. VI. Grand Jury. VII. Penalties and Offences. VIII. Murdrum. IX. Stealing. X. Outlaws. XI. Breach of the Peace. XII. Pax Regis. XIII. Defamation. XIV. Witnesses to Contracts. XV. Sanctuary. XVI. Abjuration. XVII. Hue and Cry.

I.—Judicial Proceedings.

Among a people but lately emerged from barbarism, the administration of justice is always rude and simple ; and though the absence of legal forms and pleading may casually insure a prompt and equitable decision, it is difficult without their aid to oppose the arts of intrigue and falsehood, or the influence of passion and prejudice.

The proceedings before the Anglo-Saxon tribunals would not have suited a more advanced state of civilization ; they were ill-calculated to elicit truth or to produce conviction, and in many instances, which have been recorded by contemporary writers, our more correct or more artificial notions will be shocked by the credulity or the precipitancy of the judges. As it has been before observed, the intelligent observer will discover in their proceedings the origin of several institutions, which to this day marks the administration of justice in English tribunals.(4)

The crimes to which the Anglo-Saxons were principally addicted were homicide and theft. Among men of violent passions, often intoxicated, always armed, quarrels, riots, and murders were inevitable ; and the national manners opposed

(1) Leg. 47, 51, 104 ; Chron. Sax. 132.

(2) Ingulf, 10, 16, ; Chron. Sax. 126, 130, 165.

(3) Lingard's Ap. to Hist. Eng. vol. 1, p. 478.

(4) Chron. Sax.

many obstacles to the impartial administration of justice. The institutions of lord and vassal secured to litigants, both abettors and protectors, and the custom of making presents on all occasions polluted the purity of every tribunal.(1)

There were three kinds of trial of which express mention is made—namely, the trial by ordeal, by compurgators, and by witnesses.

II.—The Ordeal.

The ordeal, from the Saxon *ordel*, a judgment or determination, signified by distinction that judgment which was passed upon the guilt or innocence of a person an appeal to heaven, wherefore it was called *judicium Dei*, (the judgment of God). This mode of trial was universally prevalent among the Saxons, Lombards, Franks, Alemani, and other northern tribes that occupied Europe, and was no doubt immediately derived from their ancestors the Germans, who, as Tacitus informs us, were much addicted to divination. But this relic of superstition was not confined to the northern tribes, for we find express allusion to a similar custom among the Greeks and Romans. The ordeal was performed in different ways: the principal of which, as used by the Saxons in England, were those by fire and water; the former for persons of free condition, and the latter for villeins. The fire ordeal was performed by walking barefoot over a certain number of burning ploughshares, as Queen Emma, the mother of Edward the Confessor, is said to have done; or by carrying a bar of red-hot iron in the hand for a certain distance. According as the accused party came off unhurt or otherwise, he or she was declared innocent or guilty. In order to give all possible solemnity to the trial, the accused were obliged for some days previous to perform various religious duties, such as fasting, prayer, ablutions, and the like, preparatory to the ceremony.(2)

The water ordeal was performed either in cold or hot water. In the former case the accused was stripped naked, bound hand and foot, and a rope tied round his body, when he was thrown into a pool; and if he floated he was pronounced guilty, but if he sunk he was acquitted, and drawn out immediately. In performing the hot-water ordeal, the accused party was to plunge his or her hand into boiling water up to the wrist if the accusation was *simplex*, that is, the crime was not heinous; and up to the elbow if the accusation was *triplex*, that is, the crime was heinous.(3)

There was another species of ordeal in use among the Saxons called *cofsned*, from the Saxon *cors*, accursed, and *sned*, a cake or piece of bread. This was performed by eating a piece of bread over which the priest pronounced a certain imprecation; and if the accused ate it freely he was pronounced innocent, but if it stuck in his throat it was considered as a proof of his guilt. Sometimes the eucharist was used in lieu of common bread.(4)

(1) Lingard's Ap. to Hist. Eng. vol. 1, p. 495.

(2) Tacit. Ger. c. 10; Sophoc. Antig. v. 264; Virg. Æn. 1. 11, v. 787; Glanv. 1, 11, c. 4; Rudborne, Hist. Wint. 1, 4, c. 1; LL. Can. c. 13; LL. Edw. Con. c. 9; LL. Athelst. ap. Brompt.

(3) Du Cange. Glos. in Voc. Aqua.

(4) LL. Inæ. c. 77; LL. Athelst. c. 6, 7. See Crabb's Hist. Eng. Law, rom c. 1 to 10.

III.—Trial by Compurgators.

The trial by compurgators was *per sacramentum vel juramentum*, that is, by the oath of the party himself, confirmed by the oaths of his neighbours. The manner of conducting this trial was as follows: the party accused of any crime was obliged to bring a certain number of persons, as prescribed by law, who laid their hands on the Gospels, or some relics, and he laid his hand over all the rest. Then he swore by God and all the hands that were under his, that he was not guilty of the crime laid to his charge; and they were supposed by this act to declare, upon their oaths, that they believed he had sworn the truth. Thus a person was said to swear by any given number of hands, according to the number of persons joining in the oath; wherefore *jurare septima manu* signified to swear by six persons besides the accused, and *jurare duodecima manu* to swear by eleven persons besides the accused. These persons were mostly called *compurgators*, because they contributed by their oaths to purge or clear the accused party of the crime laid to his charge, likewise *purgatores, sacramentales, sacramentarii, juratores, conjuratores, &c.*(1)

As to the law of compurgators, the law of the Saxons and other nations varied much; requiring in some cases not more than one, two, or three, and in others as many as thirty, fifty, or even a hundred. As to the condition of the parties, they were to be the peers or equals of the accused. In the treaty between Alfred and Guthrum the Dane, it is ordained, that if a king's thane was accused of homicide, he was to purge himself by twelve king's thanes. If an inferior thane was accused he was to purge himself by eleven of his equals and one king's thane. In regard to the qualifications of the compurgators, they were to be *boni et legales*, (good and lawful), and such persons as had not been charged with any crime. That none might not be admitted to take the oath but such as were competent, they were examined previously by the judges.(2)

This mode of trial was denominated *purgatio canonica*, (canonical purgation), because it was admitted by the canons of the church, in distinction from the ordeal and other modes of trial, which were distinguished by the name of *purgatio vulgaris*, (common purgation), because they were adopted by the secular power. It was afterwards applied to secular matters in actions of debt upon simple contract, when it was called *vadiatio legis*, (wager of law). The laws of the Saxons, which required that no contract should be made without witnesses, rendered this mode of proof for the most part unnecessary, but it was perfectly consistent with the manners and institutions of that age, that, in cases where the witnesses were dead, or otherwise unable to attend, they should allow a man of good reputation to clear himself of an unjust demand by his own oath and that of his neighbours.(3)

IV.—Trial by Witnesses.

As to the trial by witnesses, that was an obvious mode of coming at the truth of a matter, which had been resorted to by all nations at all times, and was much

(1) Du Cange Gloss. in Voc. Juramentum.

(2) Du Cange Gloss. ubi supra; LL. Ethel c. 15; Fœd. inter Alf. et Guth. apud Wilk. 47—Hick's Diss. Epistol. 34, 35 Spelm. Gloss. ad Voc. Jurata.

(3) Reeves' Hist. i. 23, 24.

facilitated among the Saxons in civil causes by the law, so often repeated and enforced, requiring witnesses to every bargain.(1)

V.—*Trial by Jury.*

Whether the trial by jury existed among the Saxons has, like many other matters connected with those remote periods, been a subject of controversy. From all the records that have been preserved from those times, it is clear that there was no such thing as a jury of twelve men sworn to give their verdict on the evidence offered to them; but it is also equally clear that the decision of at least important points was not left to a single judge.

VI.—*Grand Jury.*

But in criminal matters a law of Ethelred establishes, that a grand jury existed among the Saxons; for the law directs that twelve thanes, with the sheriff at their head, should go, and, on their oath, inquire into all offences, not charging any one falsely, nor wilfully suffering any offender to escape. From the condition of the parties, and the office required of them, namely, *accusare*, that is, to make presentment of offenders, it is beyond all question that they had only to determine what offenders should be put upon their trial and what not.(2)

VII.—*Penalties and Offences.*

The gratification of private revenge, the strongest passion in the breast of an untutored mind, was very prevalent among all the northern tribes, who, forming themselves into families or clans, were bound by particular laws of honour to resent the affronts or injuries offered to any of the members. This principle of retaliation naturally produced violent and deadly feuds, which for a time broke through all the restraints of government. As the Saxons retained this characteristic of their ancestors, their kings adapted the laws to the humour of the people, so as to moderate and regulate their passions rather than attempt to suppress them altogether, which they knew to be impossible. For this reason, we find that they adopted the principle of compensation, for every personal injury whatever, even to the taking away of life. In the code of Ethelbert, the first Saxon legislator, there appears to be hardly any other penalty attached to any offence, however heinous.(3)

If a man killed another, the slayer was to compensate his death by the payment of a certain sum, greater or less, according to the circumstances of the case. If a man killed his chief guest, his death was to be compensated with eighty shillings, and that of his other guests according to their rank. By the laws of Athelstan, the life of every man, not excepting that of the king himself, was estimated at a certain price, which was called the *were*, or *estimatio capitis*. The were for the life of a king was 30,000 krymmas, or about £300 sterling; that for a prince, 15,000; that for a bishop or alderman, 8,000; that for a sheriff, 4,000; that for a

(1) Wilk. LL. Anglo-Sax. 9, 16.

(3) Tac. Germ. c. 20; Lin. denbrog. Cod. Antiq. passim.

(2) LL. Ethel. c. 6.

thane or priest, 2,000; and that for a ceorl, 260. The price of wounds was also varied according to the nature of the wound, or the member injured.(1) The violation of female chastity was also to be compensated in a similar manner, and with similar distinctions as to the rank and condition of the parties.(2)

On this principle of compensation it appears, that if a man in hewing a tree happen to kill another, the relations were entitled to the tree.

The ordinary compensation for theft was six shillings; but if committed in a church, the offender was to restore fourfold. If a bishop was robbed, restitution was to be made elevenfold, which was greater than in the case of a king. In this manner was every offence considered in the light of a civil injury, and the object of the laws was to repair the fault rather than to punish the offender. There was, therefore, no distinction made between things done with deliberate malice and those done in the heat of passion or by inadvertence; a kind of lenity which, however admissible in a rude and simple state of society, was soon found to be inadequate to the purposes of good government.(3)

VIII.—*Murdrum.*

For the protection of the Danes from the resentment of the English, a law was made by Canute imposing a fine on the hundred, called *murdrum*, when the slayer was not found.(4)

IX.—*Stealing.*

Afterwards, punishments were not confined to pecuniary mulcts, for we read of various corporal pains inflicted on offenders, as imprisonment, mutilation, slavery, and death, in addition to the penances imposed by the church. A thief who was caught in the act of stealing might be killed with impunity if he attempted to escape or made resistance; and theft was afterwards made a capital offence, unless the thief or his friends redeemed his life by paying his full were. A thief frequently accused of theft was to lose a hand or a foot; and, by a law of Athelstan, he was upon a second conviction to be hanged. None were to escape punishment who were above the age of twelve, or who stole above the value of twelve pence. The accomplices and aiders of thieves were subject to the same penalties as thieves themselves. So, likewise, if a thing was stolen, and the family of the thief was privy to it, they were all to be made slaves; but there was an exception in favour of the wife, who was supposed to be under the subjection of her husband, and was therefore not considered as a party in the stealing, unless the things stolen were found in her separate possession.(5)

X.—*Outlaws.*

If an offender fled from justice, and was not to be found within the space of thirty-one days, he was outlawed, and any one might kill him if he made resist-

(1) LL. Ethelb. c. 26; LL. Inae. c. 70. A. D. 940.

(2) LL. Ethelb. c. 10, et seq.

(3) LL. Ethelb. c. 32.

(4) LL. Edw. Conf. c. 15.

(5) LL. Wib. c. 35; LL. Inæ., c. 12; LL. Inæ., c. 37; Jud. Civ.; Lund. apud Wilk. 70; Jud. Civ. Lund. apud Wilk. 65; LL. Inæ., c. 7.

ance. An outlaw was called in the Saxon *wulfeshcofod*, that is, wolf's-head ; which was as much as to say that any one might kill him in the same manner as they would a wild beast.

XI.—*Breach of the Peace.*

To prevent the causes and beginnings of quarrels, laws were made against every breach of the peace, but particularly in certain places, or before certain persons, whose presence the Saxons were taught in a particular manner to respect. Fighting, or even drawing a weapon, in the presence of the archbishop, was punished with a fine of one hundred and fifty shillings ; before a bishop or an alderman, with a fine of one hundred shillings. If the offence was committed near the residence of the king, or in the king's court, the life of the offender was to be at the king's mercy.(1)

XII.—*Pax Regis.*

The *pax regis*, (the king's peace), or verge of the court as it was afterwards called, extended from the palace-gate to the distance of three miles, three furlongs, three acres, nine feet, nine palms, and nine barley-corns. Besides, the *pax regia*, or king's protection, was attached to other places, as the four public roads, Watlingstrete, Foss, Hakenildstrete, and Erminstrete ; also to navigable rivers carrying provisions to cities and towns, whence such public ways were designated in a peculiar manner the king's highways. On the same principle there was the *pax ecclesiæ*, (the peace of the church), or a particular privilege attached to churches. Sacrilege was punished with the loss of the hand which committed the offence, unless redeemed with the payment of the full were ; and any breach of peace in a cathedral incurred the penalty of death, unless redeemed ; but if committed in inferior churches, it was only punishable with a fine, according to the importance of the place.(2)

XIII.—*Defamation.*

As a further prevention of quarrels and breaches of the peace, calumny and defamation were visited with a heavy penalty even at an early period. By a law of Hlothaire, king of Kent, a calumniator or defamer was obliged to pay one shilling to the person in whose house the words were uttered, six shillings to the person calumniated, and twelve shillings to the king.(3) By laws of Alfred, Edgar, and Canute, a spreader of false reports was to lose his tongue, unless he redeemed it by paying his full were. Besides, breaches of the peace in the houses and on the premises of private persons were visited with penalties, according to the condition of the party or the circumstances of the case ; in all which particulars we may trace the origin of many parts of our jurisprudence as it exists in the present day ; but there was one law among the Saxons which has not survived that period,(4)

(1) LL. Inæ, c. 45.

(2) Hick's Diss. 114 ; LL. Athels. apud Wilk. 63 ; LL. Alf. c. 8 ; LL. Alf. c. 30.

(3) LL. Hloth. ; apud Wilk. 9. A. D. 680.

(4) LL. Alf. c. 28 ; LL. Edg. c. 4 ; LL. Can. c. 26.

namely, a law of Hlothaire, king of Kent, which inflicted a heavier punishment on breaches of the peace if committed in ale-houses than if they were committed elsewhere.(1)

If any one was present at the death of a man, he was looked upon as *particeps criminis*, (an accomplice in the crime), and liable to a fine; but there was an exception made at that time, as there has been since, in favour of those who stood in a near relation to each other. By a law of Alfred, a slave might fight in defence of his master, or a father might defend his son, and a man might attack any one whom he caught with his wife.(2)

XIV.—Witnesses to Contracts.

For the prevention of frauds, as well as of disputes, it was more than once enjoined, that no contracts or bargains should be made but in the presence of two or three witnesses, or of the *gerefa*; and if any thing was sold without observing this law, the thing bargained for was to be forfeited.(3)

In addition to the above-mentioned regulations for the preservation of the peace, the Saxons adopted the humane practice of sanctuaries, or places of refuge for offenders, particularly in the cases of homicide; after the manner of the cities of refuge among the Jews, and the *asyla*, or inviolable cities among the Greeks and Romans.

XV.—Sanctuary.

After the introduction of Christianity, the Saxons converted their churches, as the Britons before had converted their temples, into sanctuaries, whither homicides might flee to protect themselves from the hasty resentment of the injured party. They might also seek refuge with an alderman, an abbot, or a thane, for three days, and with a bishop for nine days. A penalty was inflicted on the violation of sanctuary. By a law of Alfred, no one was to take revenge until he had demanded compensation, and it had been refused. If the offender fled to his own house, the injured party might besiege him there for seven days; and, if needful, might have the assistance of the magistrate to prevent his escape. If, at the expiration of that time, the aggressor were willing to surrender himself and his arms, his adversary might detain him for thirty days, but was afterwards obliged to restore him safe to his friends, and be contented with the compensation. This privilege of sanctuary extended also to thieves, who in such cases might make restitution of the plunder; but if the thief repeated the offence, he was then obliged to leave the church, and *provinciam forisjurare*, to forswear the country, that is, swear that he would not return to it; which, when applied to the kingdom, was afterwards called abjuring the realm.(4)

(1) LL. Hloth. c. 12.

(2) Reeves' Hist. i. 17; LL. Inæ, c. 34; 1 Comm. 429; LL. Alf. c. 38.

(3) LL. Hloth. c. 16; Ethel. c. 4; Athel. c. 12; Can. c. 22.

(4) LL. Athels. c. 2; LL. Wih. apud Wijk. 13; LL. c. 2, 38; LL. Edw. Conf. c. 6.

XVI.—*Abjuration.*

For the more certain detection of offenders, it was ordained by a law of Ina, that whoever suffered a thief to escape was to pay the *wero* or *forgyld* of the offender; and if it were an alderman, he was to lose his office.(1)

XVII.—*Hue and Cry.*

In confirmation of this, it was enjoined by Canute that whoever suffered a thief to escape *absque clamore*, that is, without making *hutesium et clamorem*, or hue and cry, as it was afterwards called, was to suffer the punishment of the thief, if he could not purge himself. So likewise if any one neglected to join the clamour when he heard it.

As a further means of bringing offenders to justice, endeavours were made to give all possible solemnity to the taking of an oath by various religious rites, which accompanied the ceremony; besides the penalties which were inflicted on those who violated the obligation of an oath.(2)

By the league between Edward and Guthrum the Dane false swearers were banished; by a law of Athelstan they were denied Christian burial; by one of Edmund they were incompetent to give evidence until they had purged themselves. Perjury by a law of Canute was punished with the loss of the hands, and the payment of half the full were.(3)

(1) LL. Inæ. c. 36—A. D. 700; LL. Can. c. 26—A. D. 1020.

(2) LL. Athels. upud Willk. 63.

(3) Fœd. inter. Edw. et Guth. c. 11; LL. Athels. c. 25; LL. Edm. c. 1; LL. Can. c. 23.

CHAPTER XX.

PROGRESS OF THE LAWS FROM THE NORMAN CONQUEST,
 ANNO DOMINO 1066,
 TO THE
 CONFIRMATION OF MAGNA CHARTA.

SECTION I.—LAWS UNDER WILLIAM THE CONQUEROR.

I. Introduction. II. Confirmation of the Saxon Laws. III. Feudal Tenures. IV. Earls. V. Sheriffs. VI. Courts. VII. Separation of the Secular from the Ecclesiastical Judicature. VIII. Trial by Battel. IX. Trial by Jury. X. Pleadings in French. XI. Domesday Book.

I.—Introduction.

THE accession of William I., surnamed the Conqueror, has been generally regarded as a memorable epocha in the history of English law, on account of the changes which are supposed to have taken place in the nature of landed property, the judicial form of proceeding, and what was still more, in the tone and temper of the times, which required a more rigorous exercise of the law. But, great as these changes may have been, they appear to have sprung not so much from any determination on the part of the conqueror, as from the circumstances which accompanied his taking possession of the English throne. Without entering into the question respecting his title, it is clear that he considered himself as the legitimate successor to Edward the Confessor, and founded his claim to the throne not so much on his victory over Harold as on the title which he had acquired by the will of his predecessor. His harsh treatment of the English was evidently the consequence of their disaffection and continued resistance; and, had he met with a better reception of his English subjects, it is fair to conclude that he would have dealt with them more as a king than as master. “William,” says Mr. Reeves,⁽¹⁾ “put off the character of an invader as soon as he conveniently could, and took all

(1) Reeves' Hist. Eng. Law, i. 30.

measures to quiet the kingdom in the enjoyment of its own laws." The correctness of this observation may better be learned by a statement of facts than by any enlargement on an unimportant point of dispute.

II.—*Confirmation of the Saxon Laws.*

As soon as the king found leisure from the occupations of war, he turned his thoughts to the establishment of good laws for the government of the realm: wherefore, in the fourth year of his reign, he called together his barons at Berkhamstead; and in the presence of Lanfranc, Archbishop of Canterbury, he solemnly swore that he would observe the good and approved laws of Edward the Confessor. At the same time selecting twelve men from among the English who were learned in the laws, he desired them to make a collection of such laws and customs as had been in the time of the Saxon kings.(1)

When the collection was finished and presented to the king, he seemed to give the preference to the Danish laws; upon which we are informed that the commissioners, breaking out into great lamentation, conjured the king, by the soul of King Edward, that he would suffer them to be governed by the laws and customs in which they and their children had been brought up. The king yielded to their entreaties, and called a general council, at which he consented that the laws of Edward the Confessor, with such additions and alterations as he thought proper to make, should in all things be observed. Gervasius Tilburiensis, who lived about that time, observes: "The laws of England being propounded, according to the triple division thereof into Werchenlage, West Saxonlage, and Danelage, rejecting some and approving others, he added thereunto the foreign laws of Neustria, which seemed well adapted to the preservation of the peace of the realm." Wherefore it appears that the collection was of a twofold nature; comprehending, in the first place, the laws of Edward the Confessor, properly so called; and, secondly, such additions as the king thought proper to make: all which are to be found transcribed in Mr. Selden's "Notes on Eadmer," and also in Wilkin's "Collection of the Anglo-Saxon Laws."(2)

III.—*Feudal Tenures.*

Among the most important and remarkable of William's laws must be reckoned those which relate to the king's service and military tenures. One of these laws runs thus: "We decree that all freemen shall bind themselves by pledge and oath to serve their lord William faithfully every where, both within and without the realm of England, (formerly called the kingdom of Britain), and to defend him against his enemies and against strangers." From this law it may be gathered that two things were now required from the king's tenants, or the possessors of feuds, according to the Norman system, which had not been required by the Saxon kings. First, that they should take an oath of fealty or fidelity to the king; and, secondly, that their military service was to be indeterminate, and might be required of them either at home or abroad; whereas, among the Saxons, it was confined to the

(1) Ingulph. Hist.; Matt. Paris. Vit. Fred. Abb. Sanct. Alb. Hoved. 600.

(2) Hale. Hist. Com. Law, c. 5. See Crabb's Eng. Law, c. 5.

defence of the realm. By another law the king declared his grants to be *jure hereditario* (by hereditary right), and thus converted feuds into hereditary fiefs, which among the Saxons were, as they had been originally every where, beneficiary and for life. From this change flowed many consequences, which had a material influence on landed property, such as wardships, marriage, reliefs, aids, and dower; but as the records of those times make little or no mention of these particulars, it is probable that they were not all as yet ingrafted into the system, but gradually gained a footing, as circumstances favoured.

The clergy were charged with military service, on account of the lands which they held in right of their sees; and were bound, the same as the barons, to do suit at the *curia regis* (king's court), which was in conformity with the practice of the Saxons. For then the bishops and the thanes, by virtue of their office, took an important part in the administration of justice; but, as the barons had acquired a permanent right in their lands, they became hereditary counsellors of the crown, having both an obligation and a right to attend the courts and councils of the king.(1)

William expressly assured his earls, barons, and other tenants *in capite* (tenants in chief, that is, holding directly under the king), that he would protect them in the enjoyment of their possessions, which they were to hold free, from all unjust exactions, and from tillage. This language was in conformity with that to be met with in the Saxon grants.(2)

IV.—Earls.

The other alterations in the laws introduced by the Conqueror were such as regarded the administration of justice. The government of the counties was entrusted to the earls, with a similar jurisdiction as in the time of the Saxons, except in the county of Chester, which was erected into a county palatine in favour of his nephew Hugh Lupus, to whom he granted the whole country, "to have and to hold to him and his heirs, freely by the tenure of the sword, as he, the king, held the kingdom of England by the crown." By reason of this grant, the earl palatine had all the high courts and officers of justice which the king had, with criminal jurisdiction.(3)

V.—Sheriffs.

The office of the sheriff probably acquired importance after the conquest. He was called in Latin *vice comes*, because he performed all the ministerial duties of the earl, and in his judicial character he took the place of the alderman, at least for a time. The latter officers were now confined to cities and boroughs, where they acted as judges.(4)

VI.—Courts.

Justice was administered in the early part of this reign in the same courts and nearly in the same manner as in the time of the Saxons, namely, in the *scyre*—

(1) Spelm. Concil. ii. 4.
(3) Co. 4, Inst. 211.

(2) Crabb's Eng. Law, c. 10.
(4) Matt. Paris, 1196.

mote, now called the *comitatus*, or county court; in the hundred court, now called the *hundredum*; and in the lords' court, or *curia baronis*, as it was named, the title of baron having taken the place of that of thane. Sometimes the two former of these courts were summoned at the pleasure of the king, when any cause of importance demanded their attendance. Thus on the occasion of restoring to Lanfranc, archbishop of Canterbury, the possessions which his predecessor Stygand had forfeited, the king commanded the whole county to assemble without delay, and all the men of the county of Norman birth, and especially the English versed in the ancient laws and customs, to meet together.(1)

VII.—*Separation of the Secular from the Ecclesiastical Judicature.*

The most important change produced in the judicature of the kingdom was the separation of the ecclesiastical from the secular courts, which we learn from a charter enrolled, 2 Ric. II. No. 5, *Pro decano et capitulo ecclesiæ beatæ Mariæ de Lincoln*, (for the dean and chapter of the church of St. Mary of Lincoln).

VIII.—*Trial by Battel.*

To the modes of trial already in use was added by this king, also, that by the duel or battel, a mode of deciding judicial contests. Superstition, combined with their passion for arms, gave birth to the persuasion that successful valour was the best test of truth and innocence. For this, like other ordeals, was an appeal to the judgment of God for the discovery of the truth or falsehood of an accusation that was denied, or of a fact that was disputed, founded on the supposition that heaven would grant the victory to him who maintained the just cause. Thus did the judicial combat become the most honourable, and, at the same time, the most common, method of deciding disputes among the different nations of Europe. The first law we meet with on the subject occurs in the code of Gundebald, A. D. 501, king of Burgundy.(2)

IX.—*Trial by Jury.*

As to the trial by jury, we read in this reign, for the first time, of twelve men sworn to speak the truth on any particular matter. In a cause between Gundulf, bishop of Rochester, and Pichot, the sheriff, respecting certain lands retained by the latter which belonged to that see, when the suitors or freemen of the county court, awed by the influence of the sheriff, gave their verdict in his favour; the bishop of Baieux, who presided, suspecting their veracity, and the motive of their decision, commanded them to choose from among their number twelve, who should confirm it on oath.(3)

X.—*Pleadings in French.*

The introduction of the French language into the English courts of judicature has been also ascribed to the Conqueror, who is said to have required that it should

(1) Hicks' Diss. 31; Spelm. Gloss. in Voc. Comitatus.

(2) Vel. Pat. 1, 2, c. 118; Du Cange Gloss. ad Voc. Duellum; Spelm. Gloss. ad Voc. Cam. pus; Leg. Burgund. tit. 45, apud Lindenbrog. Cod. Antiq.

(3) Hicks' Thes. Diss. Epist. 38, et seq.; Reeves' Hist. i. 84.

be generally taught in schools, to the exclusion of the English; with a view, as some have imagined, of imposing a badge of slavery on a conquered people; but others have supposed, with greater reason, that this was purely a measure of expediency: as the administration of laws rested principally with himself and his Norman followers, it was of importance that judicial proceedings should be conducted in a language that was familiar to them.(1)

XI.—*Doomsday Book.*

One of the most distinguished measures of this reign was the great survey of the demesne lands throughout the land, recorded in two books called Great Domesday or Domesday Book, and Little Domesday Book, which is said to have been formed upon the model of a similar work executed by Alfred, not now extant. In the seventeenth, or, according to some, in the fifteenth year of his reign, William appointed commissioners for the purpose of executing this work, which was completed, A. D. 1086. As the object of this work was to show what were demesnes of the crown and what were not, it has always been resorted to in the English courts to determine all questions respecting ancient demesne, and particularly what was due to the crown.(2)

SECTION II.—LAWS UNDER HENRY I., A. D. 1100 TO 1135.

I. Charter of Henry I. II. Abolition of Moneyage. III. Feudal Burthens lightened. IV. Descents. V. Curia Regis. VI. Curia Baronis. VII. Reunion of the Secular and Ecclesiastical Jurisdictions. VIII. Placita. IX. Trial by Jury.

I.—Charter of Henry I.

HENRY I. showed a decided predilection for the Saxon laws. To conciliate his English subjects, he granted them a charter, in which he expressly confirmed the laws of Edward the Confessor, that had been approved by his father. He likewise made many provisions that were calculated to lessen the burthens of the people.(3)

II.—Abolition of Moneyage.

He abolished moneyage, an oppressive tax of Norman origin, paid every three years, to prevent the renewal of the coinage.

(1) Spelm. Cod. apud Willk. p. 288.

(2) Chron. Sax. 120; Ingulph. Hist. 79; Hoved. 460; Matt. West. 229; Mad. Hist. Execut. 296.

(3) Crabb's Eng. Law. c. 10.

III.—*Feudal Burthens lightened.*

He relieved his barons and other tenants *in capite*, from some feudal burthens, which appear in the two former reigns to have been arbitrarily imposed. He required that none but a just and reasonable relief should be paid, and that nothing should be paid for a licence to marry their daughters, nor a licence refused, unless any baron wished to enter into an alliance with the king's enemies. He likewise recommended his barons to observe the same rules towards their tenants. The relief here spoken of as the *justa et legitima relevatio*, (just and lawful relief)—(relief is a sum of money paid by the heir for permission to enter upon his inheritance)—appears to be the same as the period of the Saxons, although in after times they are spoken of as distinct obligations. Notwithstanding the provisions here made respecting licences to marry, marriages became, in process of time, one of the most oppressive of the feudal burthens.(1)

This charter, which laid the foundation for the subsequent charters of Henry's successors, is intitled, "*Institutiones Henrici Primi*," the preamble to which runs as follows: "*Anno Incarnationis Dominiæ MCI Henricus filius Wilhelmi regis, post obitum fratris sui Wilhelmi, Dei Gratia Rex Anglorum, omnibus fidelibus salutem, sciatis me Dei misericordia et communi concilio baronum totius regni Angliæ ejusdem regem coronatum esse*"—(In the year of the incarnation of our Lord 1101, Henry the son of King William, after the death of his brother William, by the grace of God, king of the English, to all the faithful, health; know ye that I, by the mercy of God, and the common council of the barons of all the realm of England, am crowned king of the same). Note. King John (A. D. 1190) was the first English king who used the plural number *we* instead of *I*, in official instruments.(2)

Matthew Paris has twice recited this charter of King Henry, namely, under the years 1100 and 1213, and two copies of it are entered in the Red Book of the Exchequer, one of which is prefixed to King Henry's laws, published by Lambard and Wilkins.(3) It is likewise printed in Richard of Hagenstald's History of King Stephen, and a copy of it, taken from the Textus Rossensis, has since been published by Hearne, and afterwards again by Mr. Justice Blackstone in his Law Tracts. This is acknowledged to be the most correct copy of any, being compiled by Ernulf, bishop of Rochester, who died A. D. 1114.

IV.—*Descents.*

The law of descents, as respects land, appears to have varied in this collection both from the Saxon and Norman codes, for whereas by the former they descended equally to all the sons, and by the latter to the eldest son only. Henry adopted a middle course, and directed the principal estate to descend to the eldest: "*Primum patris sedum primogenitus filius habeat. Emptiones vero vel deinceps acquisitiones suas det cui magis velit*"—(The eldest son shall have the principal fee of the father; but the father may give his purchase to whom he will). As to the collateral descents, the law runs thus: "*Si quis sine liberis decesserit, pater aut mater*

(1) Co. 2 Inst. 8.

(2) Crabb's Eng. Law, c. 6, p. 53.

(3) Lamb. Archæon; Wilk. LL. Anglo-Sax.

ejus in hæreditatem succedat, vel frater vel soror si pater et mater desint, si nec hos habent, frater aut soror patris vel matris et deinceps in quintum geniculum, qui cum propinquiores in parentela sint, hæreditario jure succedant, et dum virilis sexus extiterit et hæreditas abinde sit, femina non hæreditur"—(If any man dies without children, his father or mother shall succeed to his inheritance, or his brother or sister if there be no father or mother; if there be neither of these, then his father's or mother's brother or sister; the nearest of kin shall succeed by right of inheritance, and while there is any male, if the inheritance is from the male line, a woman shall not inherit). This was in conformity with the law of the Saxons on the continent, from which it is taken verbatim.(1)

V.—*Curia Regis.*

In the administration of justice, Henry followed the Saxon schemes of jurisprudence, with a slight intermixture of Norman principles and forms. The supreme court of the kingdom was now regularly distinguished by the name of the *Curia Regis*, or the King's Court; an appellation that appears to have been introduced at the conquest; but the jurisdiction of this court was defined much in the same manner as it is by the law of Canute and Edward the Confessor. It took cognizance of such matters as immediately concerned the *pax regis*, or as it was afterwards more emphatically expressed, the king's crown and dignity, such as the violation of the king's protection, contempt of the king's writs, killing or injuring any of the king's household, treason, cheating, slander, outlaws, false coiners, treasure trove, wreck of the sea, rape, offences against the forest laws, reliefs of the barons, fighting in the king's palace, breaches of the peace in a man's house, harboring an outlaw, desertion, unjust judgments, denial of justice, evading the king's law, offences on the king's highway, and other matters of a similar nature.(2).

VI.—*Curia Baronis.*

The jurisdiction of the king's court is thus devised to distinguish it from the jurisdiction of the sheriff, or the franchises enjoyed by the lords in their courts, which were now distinguished by the Norman appellation of *Curia Baronis*, or by the Saxon appellation of *halmote*.(3)

VII.—*Reunion of the Secular and Ecclesiastical Jurisdictions.*

Henry wished to recur to the practice of determining ecclesiastical as well as civil matters in the county court, as was done before the conquest. This we learn from one of his laws, which runs as follows: "Sicut antiqua fuerit institutione formatum, generalia Comitatum Placita certis locis et vicibus, et definito tempore per singulas Angliæ provincias convenire, nec ullis ultra fatigationibus agitari, nisi propria regis necessitas, vel commune regni commodum sæpius adjiciant. Inter sint autem episcopi, comites, vicedomini, vicarii, centenarii, aldermanni, præfecti,

(1) LL. Hen. 1, c. 70; Lindenbrog. Cod. Antiq. 476.

(2) LL. Can. c. 12, 13, 14; LL. Edw. Conf. c. 35; LL. Hen. I. c. 10.

(3) LL. II. I. c. 9, 10; ibid, c. 20.

præpositi, barones, vavassores, tungrevii et cæteri terrarum domini diligenter intendentes, ne malorum impunitas aut graviorum privatas, vel judicium subversio, solita miseros laceratione conficiant. Agantur itaque primo debita veræ Christianitatis jura: secundo Regis Placita, postremo causæ singulorum dignis satisfactionibus expleantur"—(As it was established by ancient regulations, that the general county courts should be held at fixed times and places, throught the severel shires in England, nor should they be burthened with other sessions, unless the interests of the crown or kingdom required that they should more frequently assemble. They shall be attended by the bishops, earls, sheriffs, vicars, hundredors, aldermen, mayors, reeves, barons, vavasours, town-bailiffs, and other principal officers, who are diligently to endeavour that the poor be not ruined by the impunity of crime, the oppressions of the powerful, or the corruption of judicial officers. First let them despatch ecclesiastical causes, then pleas of the crown, and lastly let justice be awarded to the plaints of private individuals).

This projected reunion, which, if it had been carried into effect, would have restored the county court to its ancient splendor, was frustrated by archbishop Anselm; who, wishing to keep the clergy as distinct from, and as independent of, the laity as possible, prohibited bishops from determining secular causes.(1)

VIII.—*Placita.*

The causes or suits in a court were now called *placita*. *Placitum*, in French *plait*, was employed by the feudists to denote any assembly or court of the freeholders or vassals, which was sometimes held in the open field, whence the term has been derived from the German *platz*, an open space, or the Latin *platea*, a highway; but it is with much more reason to be deduced from the *placitum* of the Roman law, which signified a sentence or judgment. *Placitum* was also used at this time in the sense of a day, as *placitum nominatum*, a day appointed for the defendant to plead or answer; *placitum fractum*, a day lost to the defendant; also in the sense of a mulct or fine imposed in courts.(2)

IX.—*Trial by Jury.*

The trial by jury in criminal suits was recognised, as far at least as regards some of its most important principles. By one law, every one was to be tried by his peers, who were of the same neighbourhood as himself. "Unusquisque per pares suos judicandus est, et ejusdem provinciæ, peregrina vero judicia modis omnibus submovemus"—(Every man shall be tried by his peers of the vicinage; and we wholly reject all foreign forms of trial). By another law the judges, for so the jury were then called, were to be chosen by the party impleaded, after the manner of the Danish *nembdas*; by which, probably, is to be understood that the defendant had the liberty of taking exceptions to, or challenging the jury, as it was afterwards called.(3)

(1) Spelm. Cod. Vet. apud Wilk.; LL. Anglo-Sax. 301.

(2) LL. H. I. c. 7. 33; Du Cange, ad Voc. Wynne's Eunom. Dial. 11; LL. H. I. c. 20, 46, 54; ibid, c. 12, 13.

(3) LL. H. I. c. 3, 31; ibid, c. 5; Ante, p. 35.

SECTION III.—LAWS UNDER STEPHEN, A. D. 1235 TO 1154.

I. Charters of Stephen. II. Introduction of the Civil and Canon Law. III. Comparison between the Civil Law, Canon Law, and Common Law.

I.—Charters of Stephen.

As an additional means of conciliating the favour of his subjects, Stephen granted them two charters; but he is generally charged with having been little scrupulous in the observance of either. By the first he confirmed the charter of his predecessor Henry, particularly as regards the Saxon laws; and by the second he renewed and enlarged the privileges bestowed on the clergy, both by the conqueror and his son Henry. Of the first there is a copy preserved in an ancient MS. in the College library. Richard of Hagustald, the historian of this prince, has given the latter of these two charters, the original of which is said to have been in the hands of Mr. Hearne, although it now appears to be lost.(1)

II.—Introduction of the Civil and Canon Law.

The principal circumstances worthy of notice in this reign was the regular introduction of the civil and canon law, which is commonly supposed to have taken place at this period.(2)

III.—Comparison between the Civil Law, Canon Law, and Common Law.

Between these three codes, there are several points of difference entitled to notice in treating of English law. The civil law favored the prerogatives of the crown; the canon law asserted the claims of the pope as well as the rights of princes. The common law favoured the pretensions of the people in certain particulars. It was a favourite maxim in the civil law, "*Quod principi placet, legis habet valorem*, (whatsoever pleases the king hath the force of law), not in the absurd sense attached to it by some, that the arbitrary capricious will of the prince was law, but the sole legislative power was vested in the prince, uncontrolled by any other power. By the civil law, natural children, whose parents afterwards intermarried, became legitimate, and might inherit; but by common law they always remained bastards, and were incapable of being heirs.(3)

(1) Blackstone's Law Tracts, 287.

(2) Arthur Duck; Terrasson, *Histoire de la Jurisprudence Romaine*.

(3) Domat's Civil Law; Taylor's *Elm. of Civ. Law*, *passim*.

The civil law was, in several particulars, less favourable to women than the law of England, as that they could not hold public offices, they could not be surety for another, could not be witnesses to a will, nor guardians, except to their own children, nor arbitrators, &c. On the other hand, by the civil law, a woman might give, buy, and sell, without the consent of her husband; so likewise, neither the husband nor the wife were affected by the debts, contracts, or injuries, of each other. The common law differs in all these particulars, considering man and wife to be one flesh.

The civil law required the consent of father or mother to render a marriage valid; neither the common law nor the canon law nullify marriages for want of consent. The common law and canon law allow of no dissolution of marriage, but by reason of adultery; by the civil law it is otherwise.(1)

By the civil law the father had a property in whatever his son acquired, and such was the law of Henry I.; but it was afterwards otherwise by the law of England.(2) By the civil law the minor had a tutor or guardian for his person, and a curator for his estate, and the guardianship was committed to the next in blood, or to him who was to take by inheritance, in case the orphan died. By the law of England, on the contrary, the guardianship was given to the next of kin to whom the land could not descend, for it was a maxim of the law, that to commit the care of the minor to him who is next heir at law, is "*quasi agnum lupo committere ad devorandum*"—(as it were, to commit the lamb to the wolf, to be devoured).(3)

By the civil law, guardians were frequently appointed by the magistrates, and probably from this arose the practice in the ecclesiastical courts of occasionally appointing guardians for the personal estate and person, when there were no other guardians either by tenure or otherwise.

The canon law differs from the civil law, in reckoning degrees in the collateral line; for by the former, in whatever degree the persons are distant from the common stock, in the same degree they are distant from each other: thus, my brother and I are but one degree distant from each other, because we are distant but one degree from our father, the common stock whence we sprung; but by the civil law we are said to be two degrees, because the rule of civilians is, that there are as many degrees as there are persons begotten, not reckoning the common stock from which all descend. The common law computes degrees after the manner of the canon law.

As to the succession to the estates of intestates, it appears that the civil law had no regard to primogeniture, nor showed any preference to males before females, in which two points it differed from the common law at this period, and still more so thereafter.

The trial by jury is unknown to the civil law, the office of deciding from the evidence belonging exclusively to the judge. This is a grand mark of distinction between the common law courts and those in which the proceedings are according to the civil law, as the Ecclesiastical Courts, the Chancery, and others. It must

(1) Crabb's Eng. Law, c. vii. p. 64.

(3) Fort. de Laud. Lcr. Ang. c. 43.

(2) LL. Hen. I. c. 70; Bract. 1, 2, c. 5.

not, however, be forgotten, that the canons or constitutions of the English church favoured this trial, as appears from the law of Henry I., before cited, where, in criminal cases, this course of proceeding was recommended by the clergy.

By the civil law, counsel were not allowed to notorious criminals, nor by the law of England at that period, and long after; but this has since undergone a change in some respects.

The depositions of witnesses were taken in writing, according to the forms of the civil law, but the proceedings of the common courts were, probably, at all times conducted *vivâ voce* (orally). The charge against a person in the civil law was, and is, called the libel; the summons, a citation; the pleading *litis contestatio*, &c. What has here been said on the subject of the civil and canon law, will suffice to show in what manner, and to what extent, they obtained admittance into England at this period.(1)

SECTION II.—LAWS UNDER HENRY II., A. D. 1154 TO 1189.

I. Introduction. II. Charter of Henry I. Confirmed. III. Foreign Codes of Feudal Law. IV. Lex Salica. V. Lex Longobardorum. VI. Capitularia. VII. Grand Coutumier. VIII. Assises de Jerusalem. IX. Feudal Law in England and Scotland. X. Glanville. XI. Regiam Majestatem. XII. Law of Landed Property since the Conquest. XIII. Knight's Fees. XIV. Knight's Service. XV. Socage Tenure. XVI. Incidents to Knight's Service. XVII. Homage. XVIII. Fealty. XIX. Warranty. XX. Reliefs. XXI. Heriots. XXII. Escheat. XXIII. Sergeanties. XXIV. Frankalmoigne. XXV. Dower. XXVI. Matrimonium. XXVII. Curtesy. XXVIII. Succession and Descent. XXIX. Mode of Conveying Lands. XXX. Livery and Seisin. XXXI. Charters. XXXII. Chirographs. XXXIII. Indentures. XXXIV. Feoffment. XXXV. Release. XXXVI. Demise. XXXVII. Testaments.

I.—Introduction.

HENRY II., who is described by historians as a prince of great wisdom and virtue, contributed more than any before, or perhaps after him, towards the improvement and methodizing of the laws of England.(2)

II.—Charter of Henry I. Confirmed.

As the establishment of the Saxon laws was at that period a matter of great moment, his first step on his accession to the throne was to confirm the charter of

(1) Crabb's Eng. Law, c. vii. p. 66.

(2) Ibid, c. viii. p. 67.

Henry I., and to enjoin that "*Leges Henrici avi sui inviolabiliter observari*"—(that the laws of Henry his grandfather should be inviolably observed). At the same time as the rights and interests of men were now much more diversified and complicated than in the time of the Saxons, new laws sprung up or were formed by express enactment, to meet the circumstances as they arose.(1)

III.—*Foreign Codes of Feudal Law.*

The feudal system was now in full force in England as well as in other countries of Europe, and different codes of laws founded on these principles were now extant. Among the foreign codes, the principal are the *Lex Salica*, *Lex Longobardorum*, the *Capitularia*, the *Assises of Jerusalem*, the *Liber Feudorum*, and the *Grand Coutumier*.

IV.—*Lex Salica.*

The *Lex Salica*, or the Salique Law, is so called from the Salians, a people of Germany, who, passing the Rhine under their king Pharamond, settled in Gaul, and first formed a code of laws.(2)

V.—*Lex Longobardorum.*

The *Lex Longobardorum*, or the Law of the Lombards, is the next code in point of antiquity and importance, which contains more evident traces of the feudal polity than most others. This survived the destruction of that kingdom by Charlemagne, and it is said to be still in force in some parts of Italy.

VI.—*Capitularia.*

The *Capitularia*, or Capitularies, so called from the small chapters or heads into which they were divided, was a collection of the Laws promulgated by Childebert, Clotaire, Carloman, Pepin, Charlemagne, and other kings. The best collection of these laws is said to be that of Angersise, abbot of Fontenelles, published in 817. Of the subsequent editions, that by Baluze, in 1677, is reckoned the most complete.

VII.—*Grand Coutumier.*

The *Grand Coutumier*, or the *Coutumier of France*, is a collection of the customs, usages, and forms of practice, which had been in use from time immemorial in the kingdom of France. It was first projected by Charles VII. in 1453, but was not completed until 1609.

VIII.—*Assises de Jerusalem.*

The *Assises de Jerusalem* is among the number of the most ancient collections of feudal jurisprudence. It was made at a general assembly of lords after the conquest of Jerusalem, and was formed principally of the laws and customs of France.

(1) Crabb's Eng. Law, c. viii. p. 68.

(2) Otto Frising. i, 4, c. 32; Du Cange, Gloss. in Voc. Lex.

IX.—Feudal Law in England and Scotland.

On the laws of England and Scotland, two treatises are extant. One was written by Ranulph de Glanville or Glanvil, chief justiciary of England to Henry II.

X.—Glanville.

Glanville was much in the confidence of his sovereign, and served him in the different capacities of soldier, statesman, and judge: "*Cujus sapientiâ*," (1) observes Hoveden, "*conditæ sunt leges subscriptæ, quas Anglicanas vocamus*"—(by whose learning were compiled the laws which is called the English code). His work was entitled, *Tractatus de Legibus, et Consuetudinibus Angliæ*—(a treatise concerning the laws and customs of England)—and was probably composed at the express command of the king; for, in the Cottonian collection there is also a MS. of Glanville, which bears the title of "*Laws of Henry the Second*." It was first printed at the instance of Sir Wm. Stamford. The distinguished author of this book, after having enjoyed the confidence of his royal master until his death, assumed the Order of the Cross, and perished, valiantly fighting at the siege of Acre in 1190. (2)

XI.—Regiam Majestatem.

The second treatise referred to, is on the laws of Scotland, and is entitled *Regiam Majestatem*, because it commences with the words *regiam majestatem*, in the same manner as Glanville commences his work with the words *regiam potestatem*. The many points of resemblance between this work and that of Glanville put it beyond all doubt that the one was copied from the other, but to which the merit of originality is to be ascribed has been made a matter of dispute. (3)

XII.—Law of Landed Property since the Conquest.

As to the law of landed property, it had probably undergone greater changes since the conquest than it did at that period, when it appears to have changed more in language than in principles.

XIII.—Knight's Fees.

From a record in the second year of King John, it should seem that a single knight's fee might constitute a barony; but, if the treatise *de Modo tenendi Parliamentum*—(of the mode of holding parliament)—is to be credited, an earldom consisted of twenty knights' fees, and a barony of thirteen. A knight's fee, called in Latin *feudum militare*, was that estate in land which subjected the person holding it to military service. (4)

XIV.—Knight's Service.

Knight's service was at this time distinguished in Latin by the name of *servitium militare*; in French *service de chevalerie*. In the charter of Henry I., those who

(1) Hoved. 600; Mad. Hist. Excheq. 123; Bridgeman's Leg. Bibl. Co. 4; Inst. 345.

(2) Mad. Hist. Excheq. 87.

(3) Crabb's Eng. Law, c. viii. p. 71.

(4) Seld. Tit. Hon. pt. 2, c. 5, sect. 26.

held by knight's service were called "*milites qui per loricas terras suas defendunt*"—(soldiers who defended the country by their armour)—answering to the *fief d'haubert* of the Normans.(1)

XV.—*Socage Tenure.*

Socage tenure, the next principal tenure, was distinguished by that name in this day. Socage, in the Latin of the middle ages *socagium*, is mostly derived from the Saxon *soc*, a plough, denoting properly plough-service, answering to the *fief roturier* of the Normans. It may, with equal propriety, be derived from *socne*, a franchise, or liberty; for socage tenure was characterized for its freedom, being a more independent, though less honourable tenure, than that of knight's service. The sokemen were the husbandmen, or freemen, among the barons, and socage tenure was now called a frank or free tenure.(2)

XVI.—*Incidents to Knight's Services.*

The incidents or obligations by which these two tenures were distinguished from each other were distinctly known and marked out in this day. The incidents to knight's service were homage, fealty, warranty, wardship, marriage, reliefs, heriots, aids, escheats, and forfeiture.

XVII.—*Homage.*

Homage, in Latin *homagium*, was a service of submission paid by the tenant to the lord; so called from *homo*, a man, because in performing it the tenant said, "I become your man, that is, your servant." When the tenant did homage to his lord, he was to be ungirt, and his head uncovered. The lord was to sit, and the tenant to kneel, holding his hands together between his lord's hands, and say, "I become your man from this day forward for life, for member and worldly honour, and unto you shall be true and faithful, and bear you forth for the lands that I hold of you, saving the faith that I owe to our sovereign lord the king."(3)

XVIII.—*Fealty.*

Fealty contracted from fidelity, was the oath taken by the tenant at his admittance, who swore to be true to the lord of whom he held the lands. It differed from homage in several particulars. It was incident to all kinds of tenures, and was used at the first creation of feuds, when they were held at the lord's pleasure or for life; but homage was properly incident to knight's service, because it concerned actual service in war, and was probably not introduced until feuds became hereditary. Homage was performed kneeling, but the oath of fealty was taken standing; besides, in doing simple homage as to a private person, the tenant was not sworn. Homage is supposed not to have existed in the time of the Saxons, but was introduced at the conquest.(4)

(1) Crabb's Eng. Law, c. viii. p. 74.

(2) Sourn. on Gavelk. 138.

(3) Glan. 1, 9. c. 1; Reg. Maj. 1, 2; Grand Court, c. 126.

(4) LL. Hen. I. c. 5; Spelm. Feuds and Ten. c. 3.

XIX.—*Warranty.*

Homage and fealty were obligations on the part of the tenant; but warranty, which was an obligation on the part of the lord, arose from the relations contracted between the parties, for Glanville lays it down as a rule, "*Quantum homo debet ex homagio, tantum illi debet dominus præter solam reverentiam*"(1)—(whatever the tenant oweth by reason of homage, the same the lord oweth to the tenant excepting submission). This mutuality of obligation was recognized by the feudal laws of other countries. If land was given for the homage and service of the tenant, and a third person instituted a suit for that land, so that the tenant was evicted out of the feud, the lord was bound to warrant the land to the tenant, or to give him a *competens excambium*, an equivalent in value.(2) Warranty, like the words guarantee and guard, comes from the old German *wahren*, to look after, in the sense of protecting and defending. Sir Henry Spelman derives it from *war*, signifying arms or defence.(3)

XX.—*Reliefs.*

Relief, called in Doomsday Book *relevium* or *relevatio* is a French word, derived from the Latin *relevare*, to relieve or take up that which was fallen, because it was a sum of money paid by the tenant or vassal, when he was of age, whereby he relieved or raised up his lands, after they had fallen into his lord's hands by reason of wardship.(4)

XXI.—*Heriots.*

The heriot, which was an obligation that existed among the Saxons, has sometimes been confounded with the relief, but it has been shown by Bracton, a writer in a subsequent reign, to be a distinct thing, the heriot being a voluntary present, made by the tenant at his death to his lord, of his best beast, or his second best, according to the custom of the place. It had not, like the relief, any respect to the inheritance.(5)

XXII.—*Escheats.*

Escheats, from the French *eschoir*, to fall incidentally, was the casual descent of lands and tenements to the lord *propter defectum sanguinis*—(for lack of inheritable blood)—that is, when the tenant died without heirs; which was a part of the feudal system in every country.(6)

XXIII.—*Sergeanties.*

As lands were, in course of time, granted for other besides military services, tenures were varied on that ground. Of this description were the two kinds of

(1) Glanv. 1, 9, c. 4.

(2) Assis. de Jer. c. 99; Cout de Beauv. c. 58.

(3) Cowel. Interp. Spelm. Gloss. ad Voc.

(4) Bract. fol. 84; Co. Inst. 76, a.

(5) Ante, p. 10; Bract. fol. 86.

(6) Glanv. 1, 7, c. 17; Lib. Feud. 1, 2, tit. 86.

sergeanties, which are only alluded to by Glanville; also the tenure by escuage or scutage, which was a commutation of a money payment for personal service, that is said to have commenced in the fourth year of this king's reign, when he published an ordinance, that such of his tenants as would prefer to pay him a certain sum should be exempted from attending him either in person, or by deputy, in the expedition he then contemplated to Toulouse.(1)

XXIV.—*Frankalmoigne.*

There was another tenure of a spiritual nature, to which Glanville alludes, namely, the tenure by frankalmoigne, or free alms, as it was afterwards called, whereby a religious corporation, sole or aggregate, held lands to them and their successors for ever, *in liberam eleemosynam*, or *freealms*, for which no other service was required than prayers, and other religious exercises, for the good of the donor's soul.(2)

XXV.—*Dower.*

Connected with the subject of tenures were some other incidents, in respect to landed property, and property in general, which were come into notice. These were dower, maritagium, descents, alienation, and testaments.

Dower, called by the foreign feudists *doarium*, is derived *ex donatione*, and was equivalent to *donarium*. The term *dos* signified among the Romans, who knew nothing of endowing their wives, the marriage portion which the wife brought to her husband, whence Tacitus remarks it as a singularity among the Germans. "Dotem non uxor marito sed uxori maritus affert"—(the wife does not bring a dowry to the husband, but the husband bestows it on the wife). Although dower was unknown to the Romans, yet we have the authority of the Scripture for the use of it in the earliest ages of the world. The practice prevailed among the Grecians, until, by a refinement of manners, they began to look upon it as disgraceful. Whence Aristotle reckons it as one proof that the manners of the ancient Greeks were barbarous, because they bought their wives.(3)

On the establishment of the feudal system, dowries became universal, but they varied in quantity in different countries. The Goths did not allow dower to exceed a tenth. The Saxons, on the continent, allowed the wife the half of what the husband acquired, besides the dower which was assigned to her at the marriage. The assises of Jerusalem assigned a half, but the Lombards only a fourth. A law of Edmund gave a half, provided the widow did not marry again. The laws of Henry I. allowed a woman a third for her dower; which corresponded with what was allowed by the Sicilians and Neapolitans, and after them by the Normans and Scotch.(4)

(1) Chron. Nor. p. 995; Spelm. Cod. Vet. apud Wilk. LL. Anglo-Sax. p. 321.

(2) Glanv. 1, 7, c. 1; Grand Cout. c. 6.

(3) Tac. Germ. c. 18; Gen. c. 34, v. 2; Polit. 1, 2, c. 8.

(4) Lindenb. Cod. Antiq. LL. Wiseg. 1, 3, tit. 1; LL. Sax. tit. 8; Assis. de Jerus. c. 187;—LL. Longob. 1, 2, tit. 4; LL. Edm. c. 2, apud Wilk.; LL. Hen. I. c. 70; Grand Cout. de Norm. c. 102.

A woman might be barred of her dower by being separated from her husband, *ob aliquam sui corporis turpitudinem*—(on account of carnal transgressions)—or on account of her relationship and consanguinity; and yet in both these cases the children were considered as legitimate, and inheritable to their father. Divorce generally was a bar to dower in the Norman code. By a law of Canute, the infidelity of the wife was punished, not only with the forfeiture of every thing she possessed to her husband, but also with the loss of her nose and ears.(1)

XXVI.—*Maritagium*.

Maritagium, which answered to the *dos* of the Romans, signified the portion which a man gave with his daughter in marriage. This was of two kinds *maritagium liberum*, (free marriage), and *maritagium servitio obnoxium*, (marriage liable to services).

Maritagium liberum was, when a freeman gave part of his land with a woman in marriage, quit of all services to the chief lord. Land so given enjoyed this immunity down as low as the third heir; and, during this interval, the heirs were not bound to any homage for it, but after the third heir the land was again subject to the accustomed services. When the land was given in *maritagium servitio obnoxium*, the husband of the woman and his heirs, down to the third, were to perform all services except homage; but the third heir was to do homage for the first time, and all his heirs after him. In the mean time fealty, instead of homage, was to be performed by the women and their heirs.(2)

XXVII.—*Courtesy*.

When a man received lands with his wife in *maritagium*, or as a marriage portion, and had an heir by her, male or female, that was heard to cry within four walls, the *maritagium* remained to the husband during his life, whether the heir lived or not, but after his death it went to the original donor: this was called *Lex Angliæ*, and afterwards in English the courtesy of England, because the law was principally confined to England, but it was not altogether unknown to the Romans or the German tribes, and was probably introduced into England by the Saxons.(3)

XXVIII.—*Succession and Descent*.

The doctrine of primogeniture was one essential part of the feudal system, which was fully established in England at this period. If lands were held by knight's service or military tenure, then, according to the law of the realm, the eldest son succeeded to the father *in totum*, (to the whole estate), and none of his brothers had any claim whatever; but if the lands were held in socage tenure, and had been anciently partible, then the inheritance was divided among all the sons in equal parts, reserving to the eldest son the *primum fœdum*, (principal fee), as it

(1) Reg. Maj. 1, 2, c. 15; Grand Cout. de Norm. c. 102; Glanv. 1, 6, c. 17; LL. Can. c. 50, apud Wilk. Anglo-Sax. 142.

(2) Glanv. 1, 7, c. 18; Reg. Maj. 1, 2, c. 57.

(3) Glanv. ubi supra; Reg. Maj. 1, 2, c. 58; Craig. de Jur. Feud. 1, 2, c. 19, s. 4; Lindenbrog. Cod. Antiq. 92.

was termed in the laws of Henry I., provided he made an adequate satisfaction to the other brothers on that account. But if the land was not *antiquitus divisa*, (anciently partible), then it was the custom in some places for the eldest son to take the whole inheritance, and, in some, the younger. To succession of the lands equally to all the sons was, as before observed, a relic of the Saxon law, which was still retained in Kent, and some other parts as incident to the tenure in gavelkynd, whence the name is derived by some, as much as to say, *gif eal cyn*, "given to all the children."⁽¹⁾

XXIX. Mode of Conveying Lands.

The mode of conveying lands or tenements, had undergone some change since the Conquest, at least as far as regarded the solemnities which accompanied this proceeding.

XXX. Livery and Seisin.

The transferring of possession of lands or tenements from the donor to the donee, which was afterwards distinguished by the Norman appellation of *livery of seisin*, in Latin *traditio*, was to be done either in person or by attorney, and might be performed in various ways, as by delivering of the rings of the door, of a turf, or of any other symbol, answering to the Saxon mode of transfer, *per baculum et cullellum*—(By staff and knife)—before mentioned. Livery was also done by publicly reading the letters of attorney in the presence of the neighbours, who were called together for that purpose. This solemnity, as we learn from a writer in a subsequent reign, was of such effect in passing a freehold, that a gift was imperfect without it, being considered in law a *nuda promissio*, Naked promise.⁽²⁾

XXXI. Charters.

Deeds were now come into general use, and were known, from the most part, by the name of *chartæ*, charters, from *chartæ*, the paper or parchment on which they were written. They were either royal charters, containing grants from the king to his subjects, or they were private charters, containing gifts or grants from one subject to another.

Charters were executed with various circumstances of Solemnity, as the seal, date, attestation, and direction.⁽³⁾ Seals were very little, if at all, in use among the Saxons, who were mostly in the practice of affixing the sign of the cross. Edward the Confessor partially introduced the Norman practice of affixing to charters seals of wax which, at the Conquest, became general. This was mostly done by means of a label of parchment or a silk string, fastened at the bottom of the instrument.⁽⁴⁾ Charters were not always dated, although they were more generally so after the Conquest than before; but this was the less necessary, as they

(1) Spelm. Reliq. c. 27; Somner. Tract. de Gav. 42; Robins on Gav. 24, 25; Lamb. Peramb. p. 545.

(2) Glenv. 1. 7. c. 1.

(3) Reeves' Hist. i. 88.

(4) Ingulph. Hist. 901; Mad. Form. Dis. 3; Hick's Diss. Epist. 160.

were mostly executed in the presence of several witnesses, whose names were inserted under the clause of *hitis testibus*. (In the presence of those witnesses.) Sometimes charters were executed in open court, after the Saxon manner, and in the presence of a numerous assembly, wherefore we frequently find a long list of witnesses, concluded with the addition *cum nullis aliis*. (And many others.) It was not unusual for the king to be a witness to the charters of private men; and in after times, as in the reigns of Richard and John, the king witnessed his own charters, in the words *teste meipso*. (1) (Witness myself.)

XXXII. *Chirographs*.

Private charters were frequently called *chirographa*, chirographs, from the Greek *cheir* the hand, and *grapho* to write, signifying what was written with a person's own hand. In this kind of charters, it was usually to write the contents twice on the same parchment, having the word *chirographum*, or some other word, written in large letters between the two copies, and being afterwards cut in a straight line through the midst of the letters, one would exhibit one half of the capitals, and the other the other half.(2)

XXXIII. *Indentures*.

The practice of cutting in straight lines prevailed as early as the times of the Saxons, and continued until the reign of Henry III., after which it became usual to cut a waving or undulating line, and lastly to cut indentwise in small notches, *instar dentium*.—(Like teeth.) whence such deeds acquired the name of indenture, which has been retained ever since, although the indented line has been laid aside, and the undulating line only retained.

XXXIV. *Feoffment*.

A gift, grant, or feoffment, was, at this period, comprehended under the general name of *donatio*. The Term feoffment, in the Latin of the middle ages *feoffamentum*, which signified properly the grant of a feud or fee, appears not to have come into use before the reign of Richard I.; about which time we find the charter containing the deed, distinguished by the name of *charta feoffamenti*. (Deed of feoffment.) The words of donation were generally *dedi et concessi*, (Have given and granted,) to which afterwards was added the specific term *feoffavi*. The words of limitation to convey a fee were, at that time, not reduced to any settled form, being varied at the pleasure of the donor, sometimes simply to the *feoffee et suis*, or *suis post ipsum jure hæreditario perpetue possidendum*; (To have and to hold to the feoffee and his heirs, or to his heirs after him forever by right of inheritance.) or, in a more particular manner, limited to certain heirs, as *Ricardo et uxori sue et hæredibus suis qui de eadem veniunt*.(3) (To Richard and his wife and his heirs born of her.

In such deeds a clause of warranty was invariably inserted, to the effect that should the feoffee be evicted of the lands given, the feoffor should recompense him

(1) Hick's Diss. Epis. 26; Mad. Form. Diss. 14.

(2) Mad. Form. Diss. 2

(3) A. D. 1186; Reeves' IIis i. 91.

with others of equal value. This Clause of warranty was often expressed in very strong terms, as *contra homines, or omnes gentes*; (Against all men or all people,) or, *contra omnes homines et feminas*, (Against all men and women,) &c. To the warranty was often added an oath of the party, and also the clause that if he could not warrant, then he or his heirs should give other lands; and, in some cases, that more than the value of the land should be given by way of *excambium*, (Exchange,) if the donor or his heirs could not warrant.(1)

XXXV. Release.

A release was properly that which released a person from the claim of another, which, in those unsettled times, was as necessary for protection against hostile claimants, as a confirmation was against disseisors. The words of release were *quietum clamavi, remisi, relaxavi*, (Have quitclaimed, remised, released,) and the like.(2)

XXXVI. Demise.

Estates were likewise made for life or for terms of years, which was afterwards called a demise. This was done by a convention or covenant, of which more will be said hereafter.

XXXVII. Testaments.

As to the disposal of a man's effects at his death, this was not governed by the same law as that which regulated the alienation of lands. When any one wished to make his will, if he was not involved in debt, all his moveables were divided into three equal parts, of which one belonged to his heir, another to his wife, and a third was reserved to himself. If he died leaving no wife, or leaving no issue, in either case the half was reserved to himself, and the other half to the wife or to the issue. Glanville, however, alludes to the customs of certain places, which regulated the disposition of a man's effects; one of which was, that he was to remember his lord by the best and chief thing he possessed, in the shape of a heriot; then the church, in the shape of a mortuary; and afterwards other persons, as he thought best; but he concludes with the remark, that *ultima voluntas libera esset*; (The last will should be free.) (3)

A woman who was *sui juris*, (Independent) might make a will, but if she was married, she had not the liberty, as it would have been making a will of her husband's goods. It seems, however, that it was not unusual for husbandsto give a sort of property to their wives, even during the coverture in the *rationabilem divisam*, (Reasonable portion,) or the third part of their effects, to which, at their death, they would have been entitled.(4)

(1) Mad. Dis. 9.

(2) Reeves' Hist. i. 62.

(3) Glanv. 1. 7. c. 5.

(4) Reg. Maj. 1. 2. c. 7; Hale's Hist. Com. Law, c. 11. 2; Comm. 492; Glanv. ubisupra.

Trial by Jury.

The trial by jury, in the modern sense of the word, was now partially applied to criminal matters, for it was directed by the Constitution of Clarendon, that, should anybody appear to accuse an offender before the archdeacon, then the sheriff, at the request of the bishop, “faciet jurare duodecim legales homines de vicineto seu de villa, quod inde veritatem secundum conscientiam suam manifestabunt”—(he shall cause twelve lawful men of the vill or of the vicinage to swear that they will declare the truth thereof, according to their conscience). This mode of trial was said to be “per juratam patriæ seu vicinecti, per inquisitionem vel per juramentum legalium hominum”—(by a jury of the country or vicinage, by the inquisition or oath of lawful men).⁽¹⁾

SECTION V.—LAWS UNDER RICHARD I, A.D. 1189 TO 1199.

*I. Introduction. II. Laws of Oleron. III. Weights and Measures.**I.—Introduction.*

Although Richard I. is better known as a warrior than as a legislator, yet we find that he was not altogether unmindful of the subject of legislation.

II —Laws of Oleron.

To him England is indebted for its code of maritime law known by the name of the Laws of Oleron, which were so called because they were instituted by him while he lay at the Island of Oleron, on his return from the Holy Land.⁽²⁾ These laws, 47 in number, were framed for the purpose of keeping peace and deciding controversies; and, although many of them are, from a change of manners, become obsolete, yet they met with a general reception throughout Europe for a length of time, and served as the basis on which the more extended system of maritime law was afterwards framed.⁽³⁾

III.—Weights and Measures,

This king likewise established a common rule for weights and measures, and regulated the coinage, that it should be of the same weight and fineness.⁽⁴⁾ In the administration of justice, he followed the course laid down by his father, by

(1) Const. Clar. c. 6; Ante, p. 59; Glanv. 1. 14. c. 1.

(2) Math. Par. Ann. 1196; Seld. Mare claus. 1. 2. c. 24.

(3) Sullivan's Lect. 331; Henry's His. vol. iii. p. 535.

(4) Brompt. 1258; Trivet. Ann. 127; Hoved. 423.

sending his justices itinerant to every county in England; but he seems to have improved upon this plan of proceeding, by giving to those justices more minute means of inquiry, under the name of *capitula corona*, &c.

SECTION VI.—LAWS UNDER JOHN, A. D. 1199 TO 1216.

I. Introduction. II. Magna Charta. III. Arbitrary Consecration of Tithes.

I.—Introduction.

The reign of King John has been considered memorable on account of the great charter of liberties, well known by the name of Magna Charta, so called, as Lord Coke supposes, not so much from the quantity of the matter as from its importance. At the same time, it is admitted on all hands, that it contains nothing but what was confirmatory of the common law, and the ancient usages of the land, and is, properly speaking, only an enlargement of the charter of Henry I. and his successors. It was not, therefore, so much the grant itself, as the circumstances under which it was made, which, at that time, and ever since, has given such an interest to this transaction.(1)

In consequence of the discontent occasioned by the excesses and follies of this king, the barons formed a league at the close of the year A. D. 1214, at Bury St. Edmund's, in Suffolk, whence they proceeded, soon after, in hostile array, to the king at London, demanding a confirmation of their liberties. The king was, at first, unwilling to yield to demands that were accompanied with such an air of menace, but finding the barons resolute in their purpose, and feeling himself straitened by his own deserted and necessitous condition, he at length agreed that a conference should be held at Runningmede, or Runemed, a meadow between Staines and Windsor, which Matthew of Westminster says was so called to denote *pratum consilii*,—(the field of counsel) because it had been heretofore frequently the theatre of public deliberations.(2)

On the day appointed, the 15th of June, 1215, the barons came to the conference in great numbers, whilst the king was attended by a few only, who remained faithful to him. Having encamped apart, like open enemies, the conference was then opened, and continued until the 19th; then some articles or heads of agreement were drawn up, and reduced to the form of a charter, to which the king's seal was affixed.

(1) 2 Inst. Proem.

(2) Blackstone's Tracts, 295.

II.—Magna Charta.

Copies of this charter, as also of the charter of the forest, were afterwards made in such number, that one was deposited in every county, or, at least, in every diocese. One copy is entered in a book belonging to the archbishop's library at Lambeth, whence Sir Henry Spelman transcribed the articles into his *Codex Veterum Legum*, which are to be found in Wilkin's collection; but, according to Mr. Justice Blackstone, the original articles themselves, from which his copy was exactly printed, is now in the British Museum. It was in the possession of Archbishop Laud, and, after passing through many different hands, came at length to Bishop Burnet, and afterwards to Earl Stanhope, by whom it was presented to the British Museum.(1)

The articles are written on parchment, and thus endorsed in a cotemporary hand: "Articuli magnæ chartæ libertatum sub sigillo regis Johannis—(Articles of the Great Charter of our liberties under the seal of King John). They are said to be all legible and perfect, with the exception of a few letters. There are likewise supposed to be two, if not three, original copies, of which two are in the British Museum, which were found in Sir Robert Cotton's collection. A third, which was collated by Mr. Tyrrell with Matthew Paris's copy, was, at that time, in the archives of the dean and chapter of Salisbury, but it is not extant at present.

The contents of this charter will be considered in the next reign, when it was confirmed, with some alterations, by Henry III.(2)

III.—Arbitrary Consecration of Tithes.

The arbitrary consecration of tithes, which was forbidden by the laws of Edgar and Canute, was not altogether done away, or was revived during the confusions of the times. Pope Innocent III., therefore, in his decretal epistle, directed the archbishop to see that the tithes were paid to the respective parish churches.(3)

(1) Blackstone's Tracts, 297.

(2) Reeves' Hist. i. 209.

(3) Co. 2 Inst. 641; Seld. on Tithes, c. 9.

CHAPTER XXI.

MAGNA CHARTA, BILL OF RIGHTS, AND THE PRINCIPAL
ENACTMENTS OF THE STATUTE LAW,FROM THE CONFIRMATION OF MAGNA CHARTA TO THE REIGN OF
HENRY VII., INCLUSIVELY.

SECTION I.—LAWS UNDER HENRY III., A. D., 1216 TO 1272.

I. Confirmation of the Great Charter. II. Magna Charta and Charta de Foresta separated. III. Renewal of the Confirmation. IV. Cancelling of all the Charters. V. Their Solemn Reconfirmation. VI. Principal Contents of Magna Charta, from Manuscripts. VII. Liberty of the Church. VIII. Liberty of the Subject. IX. Delays in the Administration of Justice Prohibited. X. Exactions Prohibited. XI. Tenures. XII. Alienation Restricted. XIII. Mortmain. XIV. Forms of Administering Justice. XV. Courts. XVI. King's Bench. XVII. Justices of Assize and Nisi Prius. XVIII. County Courts. XIX. Frivolous Prosecutions Prevented. XX. Writ de Odio et Atia. XXI. Amercements. XXII. Coroner. XXIII. Constable. XXIV. Bailiff.

I.—Confirmation of the Great Charter.

The reign of Henry III., like that of his father John, is interesting in a legal point of view, on account of the confirmation of the great charter, and the other legal enactments, which were made for the purpose either of declaring, confirming, abridging, or enlarging the common law.

Although Henry III. was only nine years of age when he ascended the throne, yet the first public act which was done in his name, with the advice of William Marescall, Earl of Pembroke, the king's guardian, was the renewal of the great charter, with such additions and alterations as were thought necessary.(1)

II.—Magna Charta and Charta de Foresta separated.

This was done in a national council held at Bristol, A. D. 1216, on which occasion the articles relating to the forest were thrown into a separate charta, called the *Charta Forestæ*, as distinguished from *Magna Charta*.

(1) Blackstone's Tracts, 309, 310.

III.—Renewal of the Confirmation.

In the ninth year of this king's reign, he was declared of age by a papal bull, being then seventeen years old. It was, therefore, thought expedient that he should confirm the act of his infancy; and, accordingly, after some demur on his part, and some alterations made in the charters themselves, he confirmed *Magna Charta* and the *Charta de Foresta*, in the form in which they have been handed down to us.(1)

IV.—Cancelling both the Charters.

Notwithstanding this confirmation of the charters, the king called a council three years after, to meet at Oxford, when he declared himself of full age; and, taking the administration of affairs into his own hands, he, as his first step, cancelled both the charters; alleging that he had acted under the control of others.

V.—Their Solemn Reconfirmation

Although this measure excited much dissatisfaction, and drew forth some menaces, yet nothing further was done on the subject of the charters until the 30th year of the king, when, being in want of a supply, he was induced to yield to the wishes of the nation, by confirming them with much solemnity, in an assembly held in the great hall at Westminster. On this occasion, the Archbishop of Canterbury and the other Bishops, apparelled in their pontificals, with tapers burning, denounced a sentence of excommunication against the breakers of the charters; when, casting down their tapers, extinguished and smoking, concluded with the execration—"So may all that incur this sentence be extinguished, and stink in hell;" upon which the king immediately subjoined, "So help me God, I will keep all these things inviolate, as I am a man, as I am a Christian, as I am a knight, and as I am a king."(2)

VI.—Contents of Magna Charta.

The contents of this famous charter may be considered as they respect the privileges and liberties of the subject, the law of tenures, commerce, and the administration of justice.

VII.—Liberty of the Church.

In the first place, it was ordained that the Anglican church should be free, and enjoy all its immunities, which was a confirmation of a similar clause in the charter of Henry I., and also of the common law.

But that clause in John's charter, which gave the dean and chapter of cathedrals the liberty of electing bishops, without the consent of the king, if it were refused, was omitted in this charter.(3)

(1) Matt. Paris. Char. Dnnst. Hén. Knt. Ann. 1223.

(2) Matth. Par. Ann. 1253; Annales Waver; Hemingford, Trivet, &c.

(3) 1 Comm. 379.

VIII.—Liberty of the Subject.

The liberty of the subject, both as to his person and his property, was secured by a special provision in chap. 29. “Nullus liber homo capiatur vel imprisonetur vel disseisiatur de libero tenemento suo nisi per legale iudicium parium suorum, vel per legem terræ”—(No free man shall be arrested, or imprisoned, or deprived of his freehold, except by the regular judgment of his peers, or the law of the land). By the *iudicium parium* is here to be understood, either in a particular sense the trial of any baron by his peers or equals, being lords in parliament, or, in a general sense, the trial by jury; both which was in conformity with the principles and practices of the common law.(1)

The clause, “nisi per legem terræ,” that is, but by the law of the land, implied that no one should be put to answer without presentment before justices, by the due process of the common law, and the old law of the land.

IX.—Delays in the Administration of Justice Prohibited.

The last clause, “nulli vendemus, nulli negabimus, aut differemus rectum vel iustitiam”—(to no man will we sell, deny, or delay right and justice) is supposed to refer to the fines and oblations which were made to the king for the purpose of obtaining justice; and which, though sanctioned by the usages of the times, was considered oppressive, and was doubtless exceedingly irregular. The ancient records of the Exchequer contain numerous instances of money, horses, or other valuables, given for the express purpose of being enabled the better to prosecute a suit; and sometimes the litigant party proffered the king a certain portion, as a half, a fourth, &c. payable out of the debts which the king, as the administrator of justice, should help them in recovering; which practice, being liable to much abuse, and many inconveniences, was done away by this provision. But fines on originals being certain, were, notwithstanding this provision, continued.(2)

X.—Exactions Prohibited.

As many exactions had been made for erecting bridges, banks, and bulwarks, it was declared by chapter 15, that no town or freemen should be distrained to make bridges or banks, but only those who were formerly liable in the reign of Henry II. For the same reason, none were, by chapter 16, to have the exclusive right of fishing, except such as enjoyed that privilege in the reign of Henry II.; and all weirs or kidels were, by chapter 23, to be destroyed, except such as were placed on the coast. Such erections were considered as a species of purpresture, and of course were forbidden by the common law.

XI.—Tenures.

In regard to tenures, several provisions were made, with a view of defining the feudal law, so as to abate its rigors. Reliefs, which, in the time of Henry II., depended upon the pleasure of the king, were, by chapter 2, to be fixed at the rate

(1) 2 Inst. 49.

(2) Hale's Hist. Com. Law; c. 6.

of the *antiquum relevium*, namely, £100 for an earldom, and 100 marks for a barony. In the case of escheats, the heir was, by chapter 31, to pay the king no other relief than what he would have paid the baron. Scutage was to be taken as in the reign of Henry II. Wardships, particularly in regard to the king's tenants, were defined, in conformity with the common law, by chapters 3, 4, 5, and 27. The king was, by chapter 22, to have the year and day of those convicted of felony, but not the waste, as in Glanville's time. The rights of widows were defined by chapter 7, much in their favour. The widow was to receive her dower without difficulty; and if it had not been assigned to her before, it was to be assigned after her husband's death, namely, a third part of the lands of her husband, which were his during her coverture; whereby it appears that the law of dower was enlarged since Glanville's time, when a woman could only have a third of what her husband possessed at the marriage. It is also added in the last charter of Henry III., although omitted in the previous charters, that she was, before the assignment, to have her reasonable estover, that is, her sustenance allowed her; and she might, if she pleased, continue forty days after his death in the chief house of her husband, if it were not a castle. This was afterwards called her quarantine.(1)

XII.—*Alienation Restricted.*

A provision against the alienation of lands was made by chapter 32, which is not to be found in the charter of king John, or in that first given by this king, namely, "Nullus liber homo det de cætero amplius alicui, vel vendet alicui de terrâ suâ, quam ut de residuo terræ suæ possit sufficienter fieri domino feudi servitium ei debitum, quod pertinet ad feudum illum"—(no free man will for the future grant or sell any of his lands, without retaining enough to answer to the lord of the fee, for the services thereto appurtenant). The purpose of this provision was to uphold and preserve feudal tenures, which suffered much from the practice of subinfeudation; that is, of tenants making feoffments of their lands, for others to hold them of their superior lords; whereby the latter were in time stripped of their profits of wardships and marriages, which fell into the hands of the mesne or middle lords, who, being likewise thereby impoverished, were disabled from doing their services to their superiors.(2)

Another restriction was put on alienating lands, by chapter 36, whereby it was ordained, that it should not be lawful, for the future, for any one to give his land to a religious house, and to take it back again to hold of that house; nor should it be lawful for a religious house to take lands of any one, and lease them out to the donor.(3)

XIII.—*Mortmain.*

This sort of alienation is called mortmain, from the two words *manus mortua*, a dead hand, so called, as Sir Edward Coke supposes, from the effect of the alie-

(1) Ante, p. 78; Mag. Chart. 9 Hen. III. c. 2; ibid. c. 3, 4, 27; ibid. c. 22; Ante, p. 79;—Mag. Chart. 9 Hen. III. c. 7; Ante, p. 84; Blackstone's Tracts, 317.

(2) Mag. Chart. 9 Hen. III. c. 32; Blackst. ubi supra.

(3) Mag. Chart. 9 Hen. III. c. 36.

nation, for that thereby the lords lost their knights' services, and their escheats, &c.; or it may, with equal propriety, be explained by supposing that, as ecclesiastical bodies consisted of members, who were considered as dead in law, and holden by such persons was literally held in *mortuâ manu*.(1)

XIV.—Forms of Administering Justice.

The modes of administering justice, both as respects the jurisdiction of courts and their proceedings, as also the redress of injuries, were defined by this charter.

XV.—Courts.

One of the most important regulations on the subject of courts, is that contained in chapter 11, which ordained that "*Communia placita non sequantur nostram curiam sed teneantur in aliquo certo loco*"—(the common pleas shall not follow our court, i. e. the court of king's bench, but shall be holden at fixed places)—by which it was understood, that the *communia placita*, common pleas, that is, suits between party and party, were no longer to be entertained in *Curia Regis*, which always followed the person of the king, but were to be determined in a stationary court, whither all persons might resort.(2)

XVI.—King's Bench.

By this regulation, the distinction between the courts of King's Bench and Common Pleas, or Common Bench, as it was otherwise called, was fully established by law, although, as before observed, it had been gradually forming by practice: henceforth these courts were distinguished by different appellations: the *Curia Regis* being styled *Curia Regis coram ipso rege, coram nobis*, or *coram Domino Rege, ubicunque fuerit*—(the king's court before the king himself, before us, or before our lord the king wherever he may be)—although it still retained the old appellations of *Aula Regis*, *Curia Nostra*, and *Curia Magna*. This court retained these names, because, although the kings of England had probably for some time ceased to sit in person there, to hear and determine causes, yet the causes which were heard in that court properly belonged to the king.(3)

The *Bancum*, or Bench, was called *Curia Regis apud Westmonasterium, or de Westmonasterio, Justitiarum in Banco sedentes, or Justitarii de Banco*. The description given by Bracton of the different courts corresponds with what has been advanced on this subject, namely, that they had become distinct courts before this time, but their jurisdiction was not defined until now. "*Habet rex,*" says this author, speaking of the King's Bench, "*plures Curias in quibus diversæ actiones terminantur, et illarum curiarum habet unam propriam sicut aulam regiam et justitios capitales qui proprias causas regias terminant, et aliorum omnium per querelam, vel per privilegium, seu libertatem*"—(the king hath divers courts, wherein the several kinds of actions are tried; and of these courts, he hath one,

(1) Co. Inst. 2, I.; 1 Comm. 479.

(2) Mag. Chart. 9 Hen. III. c. 11.

(3) Mad. Hist. Excheq. 544; Dial. de Scacc. 1, 1; Reeves' Hist. i. 245.

as it were a royal court, and justices thereof, who decide the king's causes, and also those of private persons, upon plaint, or bill of privilege)—whereby it appears that the King's Bench was now considered as peculiarly the king's court, where causes, which particularly concerned the king's crown and dignity, were heard, and where the causes that concerned the subjects with one another were heard only by a particular privilege. Of the justices who sat in this court, he adds, that some were "*capitales, generales, perpetui, et majores*"—(of supreme authority, general jurisdiction, durable tenure of office, and superior rank)—who were, "*a latere regis residentes*"—(near the person of the king)—and formed a court of appeal, according to the old usage, and took cognizance of all errors in judgment of inferior jurisdictions, "*qui omnium aliorum corrigere tenentur injurias et errores*"—(who are bound to correct the unjust and erroneous decisions of all other courts). In speaking of the Common Pleas, he observes, "*Habet etiam curiam et justitios in banco residentes qui cognoscunt de omnibus placitis, de quibus auctoritatem habent cognoscendi, et sine warranto jurisdictionem non habent nec coercionem*"—(he hath also a court and justices of the common bench, who try all causes whereof they have cognizance, and have neither jurisdiction nor authority without special warrant)—from which it is clear that the bench had no authority but by the writs returnable there.(1)

XVII.—Justices of Assize and Nisi Prius.

For the more speedy administration of justice, a provision was made in chapter 12, for justices to go a circuit once every year, without waiting for the justices in eyre, who usually went only once in seven years. Before the making of statute, writs of assize of novel disseisin and *mort d'ancestor*, were returnable as in Glanville's time, *coram me vel justitiariis meis*—(before me or my justices)—but now they were returnable, *coram justitiariis nostris cum in illas partes venirent*—(before our justices, whensoever they shall go thither):—by force of this regulation the king, or, in his absence, the chief justiciary, sent justices into every county once a year. These justices were afterwards distinguished by the names of justices of assize and nisi prius, as will be further explained in its proper place.(2)

XVIII.—County Courts.

The two courts of the sheriff, namely, *comitatus*, the county court, and *turnus*, the tourn, as they were now called, were regulated by chapter 35. The former was to be held in the accustomed place from month to month, as it had been in the time of the Saxons, but no oftener; and the tourn was to be held twice a year, namely, after Easter and Michaelmas; and at the latter time a view of frankpledge was to be held, for the purpose of taking the oath of all above twelve years of age, who were to enter into some decennary, according to the old law.(3)

(1) Bract. 103; Co. 4 Inst. 70.

(2) Mag. Chart. 9 Hen. III. c. 12; Glanv. 1, 13, c. 3; F. N. B. 177.

(3) Mag. Chart. 9 Hen. III. c. 35.

XIX.—*Frivolous Prosecutions Prevented.*

By chapter 28, provision was made against frivolous and vexatious prosecutions, wherein it was enjoined that “Nullus ballivus de cætero ponat aliquem ad legem manifestam nec ad juramentum simplici loquelâ suâ sine testibus fidelibus ad hoc inductis”—(no bailiff may hereafter put any man to his *lex manifesta*, or to his oath, upon a naked plaint, without introducing lawful witnesses). The *lex manifesta* here spoken of, called by Glanville *lex apparens*, referred to the trial by ordeal, or by that of the duel, which being considered as *judicia Dei*, (judgments of God), were supposed to bring to light that which was hidden. *Ponere ad juramentum*, was the putting a man to purge himself by compurgators in a criminal suit, or by *sectatores* in a civil suit. From this statute we may gather that no free man was to be put to any of these trials, unless the plaintiff corroborated his *loquela*, plaint or declaration, by credible witnesses.(1)

XX.—*Writ de Odio et Atia.*

A provision against false imprisonment, or imprisonment on false charges, was made in chapter 26, in confirmation of the common law, appointing the writ *de inquisitione*, (of inquiry), otherwise called *breve de odio et atia*, (writ of hatred and malice), or *breve bono et malo*, (of good and evil), to be given gratis. This writ, which in those days was a great security for personal liberty, lay for any one committed to prison on a charge of homicide, who otherwise could not be bailed. It was directed to the sheriff, commanding him to make inquisition by the oaths of lawful men, whether the accused party was *rettatus odio et atia. e. i.* charged through hatred or malice; and in case it was found that he committed the deed *se defendendo vel per infortunium*, in self-defence or by mischance, then a writ of *tradas in ballium*, (deliver to bail), might issue, commanding the sheriff, if the prisoner could find twelve good and lawful men of the county to be mainprise for him, he should deliver him into the hands of the sureties.(2)

XXI.—*Amercements.*

The practice of the courts in regard to the *misericordia* or amercement, was defined and limited by chap. 14, which ordained that no freeman should be amerced, but according to the measure of his offence, saving, in the language of Glanville, his *contenementum*, countenance, or necessary support; as for a merchant, his merchandise, or for a husbandman, his weinage, that is as much as to say, his carts and implements of husbandry. Moreover, no amercement was to be assessed but by the oaths of honest and lawful men in the vicinage. Upon this statute was grounded the writ afterwards called *de moderatâ misericordiâ*, (of moderate amercement).(3).

(1) Mag. Chart. 9 Hen. III. c. 28; Spelm. Gloss. ad Voc.

(2) Mag. Chart. 9 Hen. III. c. 26; Glanv. 1, 14, c. 3.

(3) Mag. Chart. 9 Hen. III. c. 14; Glanv. 1, 9, c. 11.

XXII.—Coroner.

Coroner, in the Latin of the middle ages *coronator*, from *corona*, the crown, was so called because he took cognizance only of pleas of the crown, and was the principal conservator of the peace. If any credit is due to the Mirror, his office was of great antiquity, having been established by the Saxon kings; but it is most probable that such offices were established soon after the Conquest. They are first mentioned by name in this charter, although allusion is made to the office in the Capitula of Henry II., and in those given in the reign of Richard I. to the justices in eyre; wherein they were commissioned to choose three knights and one clerk in every county, to be *custodes placitorum coronæ*, (keepers of the pleas of the crown). The office of the coroner was then, as it is now, to make inquisition, when any man came to a violent or untimely death, *super visum corporis*, (upon view of the body), and to take indictments thereon; also to inquire concerning treasure trove, and to take appeals *de raptu virginum*, *de pace et plagis*, (of rape, of breach of the peace, and assault and battery).

XXIII.—Constables.

Of the constable, a high officer of the crown, mention has already been made; but the constable here referred to was a judicial officer, who acted as a warden or keeper, as appears from chap. 19 of this charter, and other records, as the constable of the castle of Dover, or of the Cinque Ports, which was the same as the warden of the castle and Cinque Ports.

XXIV.—Bailiff.

Bailiff, from the French *baillif*, was, properly speaking, any officer or minister who acted in the name and for another, so called, because a commission was bailed or delivered to him. The name was introduced at the Conquest, like the former word constable, and has been commonly applied to inferior officers, although the sheriff calls his county a bailiwick. For the most part, the bailiff was, and is, bailiff either of a hundred, a liberty, or a manor, &c., and as such may act for another in the place of his employer.

To this charter are added the usual words, *hiis testibus*, (in the presence of these witnessess), with a list of the greatest names in the kingdom, among the lords spiritual and temporal. This conclusion of the king's grants, with the words *hiis testibus*, was continued until the reign of Richard II. when it was laid aside in all cases, except in patents of creation. Since that time they have concluded with the words *teste me ipso*, or *in cujus rei testimonium has litteras nostras fieri fecimus patentés*, *teste me ipso*, (witness ourself, or, in witness whereof, we have caused these letters patent to be made; Witness ourself). The ancient deeds of subjects retained this form until the reign of Henry VIII.(1)

(1) Mir. c. 1, § 3; Wilk. Leg. Anglo-Sax. 346, et seq.; Bract. 50.

SECTION II.—BILL OF RIGHTS.

*I. Suspending of Laws. II. Levying Money. III. Petitioning the King.
IV. Standing Army. V. Keeping of Arms. VI. Freedom of Elections.
VII. Freedom of Speech in Parliament. VIII. Excessive Bail Prohibited.
IX. Impeachment of Jurors. X. Grants and Promises.*

The circumstances under which William and Mary ascended the throne gave rise to the Bill of Rights, which seems to be a continuation of Magna Charta, of which the leading articles are here given.(1)

I.—Suspending of Laws.

Art. 1—The pretended power of suspending or executing laws by regal authority, without the consent of parliament, is illegal.

II—Levying Money.

Art. 4—The levying money for or to the use of the crown, by pretence of prerogative, without grant of parliament, or for longer time, or in any other manner than the same is or shall be granted, is illegal.

III.—Petitioning the King.

Art. 5—It is the right of the subject to petition the king, and all commitments and prosecutions for such petitioning are illegal.

IV.—Standing Army.

Art. 6—The raising or keeping a standing army within the kingdom in time of peace, unless it be with the consent of parliament, is against law.

V.—Keeping of Arms.

Art. 7—The subjects which are Protestants may have arms for their defence, suitable to their condition, and as allowed by law.

VI.—Freedom of Elections.

Art. 8—The election of members of parliament is to be free.

VII.—Freedom of Speech in Parliament.

Art. 9—Freedom of speech, and debates on proceedings in parliament, are not to be impeached or questioned in any court or place out of parliament.

(1) See the History of the Bill of Rights, sanctioned by William and Mary before they ascended the throne, as the first of their reign.

VIII.—Excessive Bail Prohibited.

Art. 10—Excessive bail ought not to be required, nor excessive fines imposed, nor cruel nor unusual punishment inflicted.

IX.—Impeachment of Jurors.

Art. 11—Jurors ought to be duly empannelled and returned, and jurors passing upon men in trials of high treason ought to be freeholders.

X.—Grants and Promises.

Art. 12—All grants and promises of fines, and forfeitures of particular persons, before conviction, is illegal.

Having sanctioned this document, framed by the lords and commoners, William and Mary received the crown of England and regal dignity.

SECTION III.—LAWS UNDER HENRY III. CONTINUED.

I. Proceedings in the Eyre. II. Grand Jury. III. Petit Jury. IV. Abolition of the Ordeal.

I.—Proceedings in the Eyre.

Criminal justice was, for the most part, administered in the country by the justices itinerant; previous to whose coming, for fifteen days at least, there issued a general summons for all persons to attend at a certain time and place. On their arrival, the first step was to read the writs for the commission authorizing them to act. Then one of the justices, the *major*, and *discretior*, (superior in rank and discretion), as he is termed by Bracton, propounded the occasion of their coming, and informed the whole assembly that the king commanded his liege subjects, by their faith, and as they valued their own property, to render all possible assistance in suppressing burglaries, robberies, and every sort of crime. After which, they took aside some of the leading men of the county, called by Bracton, *busones*, i. e. probably, *barones comitatus*, (barons of the county), to whom they explained more fully the provisions made by the king and council, for the preservation of peace, and enjoined on them, in a more especial manner, to lend their aid, by causing all outlaws, murderers, robbers, and suspected persons, that came in their way, to be arrested, and delivered over to the officers of justice; thus giving them, as it were, a commission, to act as justices of the peace, although such magistrates were not regularly instituted until some time after.(1)

(1) Bract. 115.

II.—Grand Jury.

The bailiffs and sergeants were then sworn in open court, to choose four knights out of every hundred, who were, upon their oath, to choose twelve others, and if not knights, twelve *liberi et legales homines*, (free and lawful men), who were neither appellors nor appealed, nor suspected of any crime. The names of these twelve were to be inserted in a schedule, to be delivered to the justices. Then one of the twelve of each hundred took the following oath: "Hear this, ye justices, I will speak the truth of that which you shall command me, on the part of our lord the king; nor will I, for any thing, omit so to do, so help me God, and these Holy Gospels." After which, every one took the oath for himself severally, in this manner: "The oath which John here has taken, I will keep on my part, so help me God, and these Holy Gospels." When the swearing was concluded, the *capitula itineris*, before-mentioned, were read over to them, and they were informed that they were to be ready with their verdict on a certain day.(1)

III.—Petit Jury.

In this case they performed the office of the grand jury, but as the ordeal was now gone out of use, and cases frequently occurred where the duel, for various reasons, could not be resorted to, they were called upon, under the direction of the judge, to determine the guilt or innocence of the party accused. The latter was then informed, that if he had suspicion of the jurors, he might have them removed; after which, being severally sworn, the judge proceeded to charge them in this manner: "This man here present is charged with homicide (or any other crime), and defends the death, and puts himself therefore upon your word, *de bono et malo*, (for good and evil); and therefore we charge you, by the faith you owe to God, and the oath you have taken, to make known to him the truth thereof; nor do you fail, through fear, love or hatred, but having God above before your eyes, do you declare, whether he is guilty of that with which he is charged, or not guilty; and do not bring any mischief upon him if he is innocent.(2)

According to their verdict, the party indicted was, for the most part, either acquitted or condemned; but if the justices had reason to suspect, that either through fear, love, or hatred, they concealed the truth, or that they were misled in the information they had received; in all such cases the justices used to examine the jurors very closely, in order to detect such irregularities.(3)

IV.—Abolition of the Ordeal.

The ordeal, and the Saxon mode of trying the guilt or innocence of persons, was at length abolished in this reign.

(1) Bract. 116.

(2) Ibid, 143.

(3) Ibid, 137.

SECTION IV.—LAWS UNDER EDWARD I., A. D. 1272 TO 1307.

I. Introduction. II. List of the Statutes. III. Law of Entail. IV. Estates in Tail. V. Ecclesiastical Property Protected. VI. Warranty. VII. Fines. VIII. Administration of Justice. IX. Judicature in Council and in Parliament. X. Justices of Assize and Nisi Prius. XI. Justices of Oyer and Terminer. XII. Justices of Gaol Delivery. XIII. Ecclesiastical Jurisdiction. XIV. Benefit of Clergy. XV. Writ of Dower.

I.—Introduction.

Edward I. has been frequently styled the English Justinian, on account of the great improvements which he made in English jurisprudence. Sir William Herle, chief justice of the court of common pleas, said of this prince, “Fuit le plus sage Roy que unques fuit”—(he was the wisest king that ever existed). Sir Matthew Hale was of opinion, that the whole scheme of English law, such as it now is, may, date its existence from this king’s reign.(1)

II.—List of the Statutes.

As the alterations in the law were principally made by parliamentary enactment, they will be the best explained by considering the statutes which were passed in his reign; first giving a list of them in chronological order, and then treating of their contents.

The statute of Westminster, which was the first public act of this king, was passed in the third year of his reign, and received the name of Westm. I. to distinguish it from other statutes of the same name. In the next year, three statutes were passed, namely, the *Statutum de Extenta Manerii*; *De officio Coronatoris*; and *De Bigamis*. In the sixth year was passed the Statute *de Religiosis*, or the statute of Mortmain, and a statute prohibiting going armed to parliament. In the tenth year the Statute of Ruthland; in the eleventh year the *Statutum de Mercatoribus*, or the Statute of Acton Burnell; and in the twelfth year, the *Statutum Wallie*.

In the thirteenth year were passed six statutes, namely, the Statute of Westminster, called Westm. 2; the Statute of Winton, or Winchester; the Statute of Merchants; the Statute of *Circumspecte agatis*; the *Statutum Civitatis Londini*, regulating the policy of the city of London; and the *Forma Concessionis et Confirmationis et Exemptionis Chartarum*.

The *Statutum Exoniæ* was passed in the fourteenth year; the *Ordinatio pro Statu Hiberniæ*, in the seventeenth year; and in the eighteenth year, five statutes,

(1) Co. 2 Inst. 156; Hale’s Hist. Com. Law, c. 7.

namely, the Stat. *Quia Emptores*, or Westm. 3; the Statut. *de Judaismo*; two statutes, named *Quo Warranto*; and the Statute of *Modus levandi Fines*. In the twentieth year six statutes, namely, the Statute of Vouchers; the Statute of Waste; the Statute *de Defensione Juris*; the Statute *de Moneta*, and the *Articuli de Moneta*. In the twenty-first year, the Statute *de iis qui ponendi sunt in Assisis*, and the Statute *de Malefactoribus in Parcibus*. In the twenty-fourth, the Writ of Consultation. In the twenty-fifth year, the Statute *Confirmationis Chartarum*, and the *Sententia Domini R. Archiepiscopi super Præmissis*. In the twenty-seventh, the Statute *de Finibus levatis*, the *Ordinatio de Libertatibus perquirendis*, and the Statute *de falsa Moneta*. In the twenty-eighth year, the Statute of Wards and Reliefs, the Statute of Persons appealed, and the Statute *Articuli super Chartas*. In the twenty-ninth year, the Statute *Amoveas manum*. In the thirty-third year, six statutes, namely, the Statute *de Protectionibus*; the Statute of the Definition of Conspirators; the Statute of Champerty; the ordination of Inquests; the *Ordinatio Forestarum*; and the Statute for measuring of Lands.

In the thirty-fourth year were passed five statutes, namely, the Statute *de Conjunctione Feoffatis*; a statute one the Statute of Winchester, the Statute of amortizing Lands; the Statute *de Tallagio concedendo*, and the *Ordinatio Forestarum*. In the thirty-fifth year, were the Statute *de Asportatis Religiosorum*, and the Statute *Ne Rector prosternet Arbores in Cæmeterio*.

III.—Law of Entail.

The most important statutes which affected private rights, were those which imposed restrictions on the alienation of land. The first of these was the celebrated provision of the stat. Westm. 2, *de Donis conditionalibus*, (concerning conditional grants), which required that the will of the donor, according to the form of the deed of gift, manifestly expressed, was to be observed; so that they to whom the land was given under certain conditions, were to have no power to alien it, but it was *remanere*, to remain; or, as it is now termed, to descend to their issue after their death, or to revert to the donor or his heir, in failure of issue.(1)

IV.—Estates in Tail.

The estate created by this statute, being but a limited one, was called *feudum talliatum*, or an estate in fee-tail, from the French *tailler*, to cut; because this estate was, as it were, cut out of the whole.

V.—Ecclesiastical Property Protected.

To prevent the alienation of by abbots, friars, &c., of lands, granted to religious houses, it was enacted, that lands so alienated were, if they had been granted by the king, to be taken into the king's hands, and the purchaser to lose his purchase money. If granted by a common person, he was to have a writ called *contra formam collationis*.(2)

(1) Stat. de Donis. cond. Westm. 2, 13 Ed. 1, c. 1.

(2) Stat. West. 2, c. 41; Co. 2 Inst. 457.

Carrying ecclesiastical property out of the kingdom was prohibited by the statute *de Asportatis Religiosorum*, under pain of being punished grievously for such contempt of the king's injunction. This law was made to prevent the evil practice of the governors of religious houses levying tiliages and impositions on such houses, in order to send the amount to Rome. It was levelled against religious persons who were aliens, and laid the foundation of all the subsequent statutes of *præmunire*, as they were afterwards called.(1)

Trees planted in a churchyard were, by the statute *N^e Rector prosternet Arbores*, declared sacred property, which the rector was to preserve as such untouched.(2)

VI.—Warranty.

As the effect of warranty was to bar the heir from ever claiming land against the deed of his own ancestor, it was found necessary, by a particular enactment in the statute of Gloucester, to protect the interest of the heir in regard to the inheritance of his mother; so that, in case of alienation with warranty, by a person holding *per legem Angliæ*, (by the curtesy), the heir was not to be barred by the warranty from demanding and recovering, by a writ of *mort d'ancestor*, the land of the seisin of his mother. In like manner, the heir was protected from the alienation of his father's property by his mother.(5)

VII.—Fines.

Fines, or final concords, which are supposed to have been real suits, as before observed, were now become a mode of conveyance; preserving, at the same time, all the forms of a real suit. From the statute, *Modus levandi Fines*, we learn the mode of levying fines, which was as follows:—When the original was delivered in the presence of the parties, a countor or sergeant was to say, “Sir Justice, *Congé d'accorder*,” (liberty to accord), that was praying the *licentia concordandi*, on which a fine was due to the king. Then the justice inquired, “*Que donera?*” (to whom will he grant). “Sire Robert,” was the reply, naming one of the parties. When they had agreed upon the sum to be paid to the king, then the justice was to say, “*Criez la peez*,” that is, rehearse the concord, upon which the sergeant said, “The peace, with your leave is such, that William, and Alice his wife, who are here present, do acknowledge the manor of B, with its appurtenances contained in the writ, to be the right of Robert, *come cell' que il ad de lour done*, as that which he hath of their gift, to have and to hold to him and his heirs of William, and the heirs of Alice, as in demesnes, rents, seigniories, courts, pleas, &c.(1)

No fine was to be levied without an original writ, returnable before four justices on the bench, or elsewhere, and in the presence of the parties, who were to be of full age, of sound memory, and out of prison. If a *feme covert* (married woman)

(1) Stat. of Carlisle *de Asportat. Religiosorum*, 35 Ed. I. st. 1; Co. Inst. 129, 1.

(2) Stat. *N^e Rector prosternet Arbores*.

(3) Stat. Gloucester, 6 Ed. I. c. 3.

(4) Ante, p. 94; Stat. *Modus levandi Fines*, 18 Ed. I. st. 4.

was one of the parties, she was first to be confessed of the justices, and if she assented not to the fine, it was not to be levied. The reason of such a solemnity was, because in the language of the statute itself, a fine is so high a bar, of such great force, and of so binding a nature, that it concludes not only parties and privies, and their heirs, but also all other people in the world. By this statute is regulated the modern practice of levying fines, by way of conveying lands and tenements.

Attempts having been made in the preceding reign to invalidate fines, and to render them a less valuable security, the statutes *de Finibus levatis* (of levying fines) was passed, to put a stop to this practice. Exceptions to fines were not to be acknowledged in the courts; and the notes of all fines were henceforth to be openly and solemnly in the king's court, on certain days of the week, at the discretion of the justices.(1)

VIII.—Administration of Justice.

The administration of justice engaged the attention of this king as much as any other subject, in regard to the proceedings of courts, the duties of officers, and the remedies of civil injuries.

IX.—Judicature in Council and in Parliament.

It appears from a cotemporary writer, that the king administered justice, not only in his own council, but also in parliament, which was erected into a court of judicature; besides which, this king had a court *coram auditoribus specialiter à latere regis destinatis*—(before commissioners specially delegated for that purpose from near his person)—whose office was not to determine, but to report to the king what they had heard, that he might afford a suitable remedy to the parties applying for redress.

For the better ordering of the business of the courts, the justices of the king's bench and common pleas were directed by the statute Westm. 1 to decide all pleas that stood for determination at one day, before a new matter was arraigned, or any new plea entertained. The regular return of writs was directed by the statute Westm. 2, in consequence of an evil practice having sprung up, of receiving writs after the regular day of return, and in the absence of the parties, whereby they lost their lands by default.

X.—Justices of Assize and Nisi Prius.

The institution of justices of Assize and Nisi Prius, commenced by Magna Charta, was now so far perfected, that its establishment is usually dated from this reign. The statute of Westm. 2, since distinguished by the appellation of the statute of Nisi Prius, ordained, that two justices sworn should be assigned, before whom, and no others, should be taken all assizes and novel disseisin, *mort d'ancestor*, and attainments; and that these justices were to associate to themselves one or

(1) Stat. de Finibus levatis, 27 Ed. I.

two of the discreetest knights of the country into which they came. The assizes were to be taken three times in the year, instead of once, as heretofore was the practice.(1)

XI.—*Justices of Oyer and Terminer.*

Besides the institutions of justices of Assize and Nisi Prius, we also read now, for the first time, of justices *ad audiendum et terminandum*, (to hear and determine) that is, of *oyer et terminer*, as it was afterwards called.

XII.—*Justices of Gaol Delivery.*

As further improvement on the judicial proceedings of these, and justices of assize were constituted justices of gaol delivery, so that prisoners might have a speedy trial, and not be detained in prison longer than was needful.(2)

XIII.—*Ecclesiastical Jurisdiction.*

The bounds of ecclesiastical jurisdiction, which had been hitherto a subject of contest, were defined by the statute *Circumspecte agatis*, in conformity with the regulations and practices of former reigns. Also the matter of prohibitions, regulated by the statute of the Writ of Consultation.

XIV.—*Benefit of Clergy.*

There was one privilege which the church had long enjoyed, under the name of the *privilegium clericale*, or benefit of clergy; whereby they were so far exempted from the secular jurisdiction, that if a clerk was arrested for homicide, or any other crime, he was delivered, on demand, to the ordinary, without making any inquisition, that he might be dealt with according to the laws of the church. But this privilege appears to have been abused, and clerical offenders were dealt with more leniently than was consistent with the ends of justice: wherefore the king enjoined the prelates, upon the faith they owed him, that those who had been indicted of such offences, by good and lawful men should in no wise be delivered without due purgation, so that the king might have no need to provide otherwise. As a consequence of this statute, it should seem that clerks were not delivered to the ordinary, as they had been heretofore, until inquisition had been made; and if the accused was found innocent, he was to be discharged; but if guilty, his lands and goods were forfeited to the king, and his body given, upon demand, to the ordinary, who was to answer for any misconduct in this matter.(3)

XV.—*Writ of Dower.*

A writ of dower was given by the statute Westm. 2, c. 4, in favour of a widow, where it was objected to her that her husband lost the land by judgment. If, on inquiry, it was found that he lost by default, and that he had a right to the land, then the widow might recover her dower.

(1) Stat. West. 2, 13 Ed. I. c. 30.

(2) Stat. 27 Ed. I. st. 1, c. 3.

(3) Bract. 123; Stat. West. I. c. 2.

SECTION V.—STATUTE LAW UNDER EDWARD II., A.D. 1307, 1327.

I. Statute de Militibus. II. Statute de Prerogativa Regis. III. Wreck. IV. Treasure-trove. V. Decisions of Courts. VI. Descents. VII. New Writs. VIII. Action of Debt. IX. Actions of Covenant. X. Action of Trespass. XI. Records. XII. Year Books.

Notwithstanding the troubles of this reign, Edward II. was not unmindful of the subject which had so much engaged the attention of his father. Of this we have memorials, not only in the statutes which were passed, but also in the reports of judicial proceedings, and the decision of courts.

I.—Statute de Militibus.

The first public act of this reign is said to have been a writ granted by the king in parliament, which being entered, by his direction, on the record, acquired the force of a law, and is now placed among the statutes, under the title of the *Statute de Militibus*, (statute concerning knights), the object of which was to abate that part of the feudal system which required every one possessed of a *feudum Militare* (knight's fee) that he should *suscipere arma*, that is, take upon him the order of knighthood. In the second year of this king was passed an act for enforcing the statute *Art. sup. Chartas*, and in the year following, another, entitled *Litteræ Patentis*, &c., in order to enforce the observance of the statute *De Asportatis Religiosorum*, passed in the last reign. In the ninth was passed the famous statute of Lincoln, called the *Stat. Articuli Cleri*, the object of which was to adjust the long-disputed claims of ecclesiastical jurisdiction. In the reign of Henry III., Boniface, younger son of Thomas, earl of Savoy, archbishop of Canterbury, and uncle to Queen Eleanor, aimed at enlarging the boundaries of ecclesiastical jurisdiction, and made several canons and constitutions, which tended to encroach on matters belonging to the common law, as the trial of the limits and bounds of parishes, the right of patronage, trial of right of tithes by *indicavit*, and other things of a similar nature.(1)

II.—Statute de Prerogativa.

Of the three statutes passed in the 17th year of this king, that entitled *Prærogativa Regis*, is the most important. *Prærogativa*, from *præ* before or first, and *rogo*, to ask, was applied by the Romans to such tribes as were first asked, that is, their votes taken in the choice of consuls, whence it came to signify generally pre-eminence or superior authority.

(1) Stat. 2 Ed. II.; Stat. 9 Ed. II.; Co. 2 Inst.

III.—*Wreck.*

The ancient prerogative of wreck was now confirmed by this statute. Wreck, in the Saxon *wraec*, is like English rack and break, derived from the Greek *regnumi*, in Latin *frango*, and signifies a vessel tossed on the shore in a broken and shattered condition; but, in a legal sense, the right to the vessel and the goods therein contained.(1)

IV.—*Treasure-trove.*

Treasure-trove, *thesaurus inventus*, from the French *trouver*, to find, was, at one time, a no considerable source of the king's revenue. Under treasure-trove was comprehended money or coin, gold, silver, plate or bullion, which was hidden in the earth, or any other private place, which Bracton, in the language of the civil law, calls "*vetus depositio pecuniæ*"—(an ancient concealment of money). If the owner were not known, this belonged to the king, but if he were discovered, he might lay claim to it; and if the thing were found in the sea or upon the earth, it appears that it belonged to the owner. By a law of Edward the Confessor, *thesaurus inventus* belonged to the king, unless it was found in church lands, when the whole of the gold and half the silver belonged to the king, and half to the church.(2)

V.—*Decisions of Courts.*

The common law had necessarily undergone some alterations and modifications, not only from the statutes passed in the two preceding reigns, but also from the decisions of courts, where every point of law was more nicely defined and clearly elucidated than formerly.

VI.—*Descents.*

The law of descents had undergone some alteration or modification since the time of Glanville. The doctrine of primogeniture, which was then established in knight's service, was afterwards extended to other tenures. Bracton lays it down as a general rule in law, that "*jus descendit ad primogenitum*." It was also then held, as it has been ever since, that all descendants *in infinitum*, (to an indefinite extent), from any person who would have been heir, if living, were it to inherit *jure representationis*, (by right of representation). Thus the eldest son dying in the lifetime of his father, and leaving issue, that issue was to be preferred in inheriting to the grandfather, before any younger brother of the father; which settled the doubt that existed in Glanville's time, respecting the law of succession in this particular.(3)

Males were preferred to females so strictly, that by a rule of law the right should never come to a woman so long as there was a male, or one descended from a male, whether from the same father or not.

(1) Stat. Prærog. c. 11.

(2) Bract. 120; LL. Edw. Conf. c. 14.

(3) Bract. 64, Reeves' Hist. Law, i. 310; Bract. 63, a.; Ante, p. 89.

VII.—*New Writs.*

Among the writs of *contra formam feoffamenti* grounded upon the statute of Marlebridge, chap. ix. was one not mentioned before this reign, called a *monstravit*, and in aftertimes more frequently *monstraverunt*. This writ, also, lay at common law for tenants in ancient demesne, who had been burdened with more services than were originally in the tenure. Questions of this sort were generally determined by application to doomsday-book in the Exchequer.

There are several other actions, now mentioned for the first time, which were grounded on the statutes of the two preceding reigns: as the writ *de contributione*, on the statute of Marlebridge, to compel coparceners to aid the eldest sister in performing the services; also the writ of office called *diem clausit extremum*, grounded on the same statute, chap. xvi. for taking into the king's hands the lands of one who died seized *in capite*; a writ of entry for the reversioner, founded on the statute Westm. 2, c. 3; a writ *contra formam collationis*, on statute Westm. 2, c. 41; and the writ *in consa. provisa*, grounded on the statute of Gloucester, chap. vii.(1)

VIII.—*Action of Debt.*

An action of debt, which, in the reign of Henry II., lay for the recovery of money or chattels, had now acquired sufficient importance to be nicely considered in the courts. In the preceding reign it was split into two, namely, a writ of *debet* for the recovery of money, and a writ of *detinet* for the recovery of chattels, which distinction was now regularly observed. A writ of *debet* was usually grounded on a deed of obligation to pay money, which, for the most part, was a writing sealed; but sometimes, according to the ancient usage, it was grounded upon a mere bargain of buying and selling. In the first case, the plaintiff would state his demand, and produce a deed testifying the transaction. The common plea to a deed, was *nient le fait*, that it is not the defendant's deed; sometimes *diens age*, that is, not of age when the deed was made. A plea was held to be good to say that it was made in Berwick, because the place was out of the jurisdiction of the court. The same objection held good against a deed made at Chester and Durham. If the transaction passed without writing, then the plaintiff after stating his demand, would offer to produce his *secla*, according to the old usage.(2)

Actions of detinue, were most usually brought for deeds and charters, which, when a feoffment of lands was made, were frequently deposited in the hands of a third person; and sometimes were demanded in an action of detainer, whereby the merits of the detainer were brought under discussion. By an act of detinue, were also tried the merits of the question respecting the *rationabilis pars*, (reasonable portion), but the decisions of the courts were invariably against such claim.(3)

IX.—*Actions of Covenant.*

The writ *de conventione*, or an action of covenant, which is mentioned by Bracton, lay sometimes for the recovery of moveables and immovables, for the most part

(1) Mayna. 67. 91, &c.

(2) Flet. 138. Mayn. 589; Reeves' Hist. ii. 330; Mayn. 24.

(3) Reeves' Hist. ii. 332.

for land or for some profit, or casually issuing out of land, as for not doing homage and services, and the like. A writ of annuity was most frequent between ecclesiastics, in which cases it was no uncommon plea to allege, that it was a matter of a spiritual nature, but this plea was always overruled.(1)

X.—*Action of Trespass.*

Trespass, in Latin *transgressio*, signified literally the unlawful passing of any bounds, whence it came to be used in the sense of any injury done with force, either to the person or the property of another. In the reign of Henry III. actions of trespass appear to have been but little in use; civil injuries being, for the most part, determinable by the assize, and, personal injuries prosecuted as criminal offences, by appeal or indictment. Trespasses are reckoned by Bracton among the *placita coronæ*, (pleas of the crown), particularly in cases of unlawfully distraining; and he held that the writ *quare vi et armis*, (for that he entered with force and arms), a man entering land, was bad, because it brought the mode of trespass into question, rather than the trespass itself, although there were, in his time, trespasses respecting land, which were determined by the assize, or more frequently by the jurata; as if any one made use of another's land against the will of the owner, or appropriated any thing to himself which was common. In the next reign, actions of trespass became very frequent, in cases when the assize had been heretofore resorted to; as, for breaking and entering houses and lands, beating down a mound, cutting trees, and the like; in which cases it was held to be a good plea, if the defendant said it was his own freehold, so that titles to land might in this manner be tried.(2)

XI.—*Records.*

As to the records, it is a remarkable circumstance, that notwithstanding the inability of that prince, and the troubles of the times, he was the first to make provision for their better custody. In the 14th year of his reign, he, by writ of privy seal directed to the treasurer, barons, and chambers, of the Exchequer, commanded them forthwith to employ proper persons to superintend, methodise, and digest, all the rolls, books, and other writings, of the times of his progenitors, kings of England, then remaining in the treasuries of his Exchequer, and in the Tower of London; all which, as it is there stated, were not disposed, in such manner as they ought to be, for the end of the public good.

In his 16th year, he gave similar directions respecting the bulls, charters, and other muniments, touching his state and liberties within England, Ireland, Wales, Scotland, and Ponthieu; and a few months after he appointed Robert de Hoton, and Thomas de Sibthorp, to examine and methodise all such charters, writings, and other national muniments, as at that time, were deposited in the castle of Pontefract, Tuttebury, and Tunbridge, also such as had been newly brought into the Tower of London, and all those which were kept in the house of the Black-Friars preachers.

(1) Mayn. 603: Reeves' Hist. ii. 336.

(2) Bract. fol. 135; Ibid. c. 413; Ibid. 218; Mayn. 458.

XII.—Year Books.

To Edward II. we are also indebted for the commencement of the judicial reports, which have since acquired so much importance in the study of the law. We have, from the beginning of this king's reign, year-books, or books of the years and terms, containing the reports of adjudged cases, which were so called, because they were published annually, from the notes of certain persons, who were stipened by the crown for this employment. By comparing these reports, as given in Maynard's year-books, *temp.* Ed. II. with those of modern times, it will appear, that although they were much more concise, yet they are often much more pointed and argumentative, than those of the present day.(1)

SECTION VI.—STATUTE LAW UNDER EDWARD III., A.D. 1327, 1377

- I. King's Councils. II. Privy Council. III. Magnum Concilium Regis. IV. National Councils. V. Names of the National Councils. VI. Parliament. VII. Constitution of Parliament. VIII. Attendance in Parliament. IX. Frequency of Parliaments. X. Manner of Assembling Parliaments. XI. Sessions of Parliament. XII. Opening of Parliament. XIII. Humble Address of the Speaker. XIV. Petitions of the Commons. XV. Subsidies. XVI. Question of General Polity brought before Parliament. XVII. House of Lords a Court of Judicature. XVIII. Criminal Jurisdiction. XIX. Impeachment by the Commons. XX. Liberty of Speech. XXI. Law of Landed Property. XXII. Commission of Nisi Prius. XXIII. Justices of the Peace. XXIV. Quarter Sessions. XXV. Pleadings in English. XXVI. Limitations and Remainders. XXVII. Devises. XXVIII. Warranty. XXIX. Action of Covenant. XXX. De Ejectione Firmæ. XXXI. Action of Trespass and on the Case. XXXII. Replevin. XXXIII. Trial per Pais or by Jury. XXXIV. Challenging. XXXV. Treason. XXXVI. Petit Treason. XXXVII. Homicide. XXXVIII. Chance Medley. XXXIX. Murdrum. XL. Arson. XLI. Theft. XLII. Burglary. XLIII. Larceny. XLIV. Rape. XLV. Mayhem. XLVI. Striking a Clerk. XLVII. Striking in Courts. XLVIII. Usury. XLIX. Forestalling. L. Felony. LI. Standing Mute. LII. Perjury. LIII. Accessories. LIV. Indictments. LV. Hue and Cry. LVI. Pleas of autrefois Acquit and autrefois Attaint. LVII. Privileges of Married Women.*

(1) Bridgeman's Leg. Bibl.

At this period, the English jurisprudence was fast approaching to the form which it has since assumed, it is most convenient to take a general review of some things, which, in order not to destroy the thread of the narrative too much, have not hitherto been touched upon. The first of these points is, what regards the constitution, which, by the use of parliamentary power, and the alterations in the jurisdiction of courts, and other circumstances, had undergone some changes.

I.—King's Councils.

The king had different councils, by whose advice and assistance he governed the realm. The first was that which consisted of his own immediate counsellors, as the treasurer, chancellor, justices, barons, and such other persons, learned in the laws and judicial matters, as he thought proper to call to himself.(1)

II.—Privy Council.

This was called the *Magnum privatum Concilium Regis*, also *Concilium Regis privatum*, *Concilium continuum*, and *Concilium secretum Regis*—(the king's great privy council—the king's privy council—perpetual council, and the king's secret council)—and in aftertimes, the council board and the privy council. With these counsellors the king sat at pleasure; their number was also at the king's pleasure; but at this time they were about twelve.

III.—Magnum Concilium Regis.

There was also another council, called *Magnum Concilium Regis*—(the king's great council)—which appears to have consisted of the peers of the realm, or as many of the barons as the king thought proper to consult occasionally, of which there are several examples in the course of this reign. To this might be added a third council, who were sworn to give advice to the king, namely, his judges and law officers, whom he consulted in all judicial matters. These councils of the king used to sit in different chambers that were about the palace, sometimes *en la chambre blanche*, or *en la chambre peinte*—(in the white chamber or in the painted chamber)—and sometimes, as is said, *en la chambre des etoiles*, or the star chamber, as this council was afterwards called; whence we learn, from the parliament rolls, that the returns of some writs in this reign were said to be either *coram nobis*, or *coram nobis in camera*, or *coram nobis in cancellaria*—(before ourself, or before ourself in our chamber, or before ourself in chancery). At the same period these chambers existed in France.(2)

IV.—National Councils.

The fourth kind of councils were the national councils, which being essentially different from all the rest, are entitled to particular notice.

National councils are of such remote antiquity, that we find them existing among the ancient Germans: "De minoribus rebus," says Tacitus, "principes

(1) Co. Inst. 110. See Crabb's Hist. Eng. Law, c. 15.

(2) Dugd. Summons to Parli. p. 139 et seq.; Co. Inst. ubi. supra; Co. 4 Inst. 60; Reeves' Hist. ii.; ii. 415.

consultant, *de majoribus omnes*”—(the chiefs consulted concerning minor affairs, but the whole populace concerning more important ones)—vestiges of which are, under various modifications and forms, to be met with in the diets of Poland, Germany, and Sweden, and the assembly of the states formerly in France, having been brought into Europe by the northern tribes, who, on the decline of the empire, established themselves in different countries. Among those rude people such assemblies were only irregular meetings, brought together on the exigency of the occasion, to determine, for the most part, questions of peace or war. Their decisions were made by acclamations, and immediately followed by action, &c. As civilization advanced, and questions of civil polity became more numerous and complicated, such assemblies assumed a form and order suited to the temper and circumstances of different nations. In England they have retained more of their original popular character than in any other.(1)

V.—*Names of the National Councils.*

The national councils of the Saxons were called, for the most part, *synoth*, or *micel-synoth*, the great synod, because they were of a religious character; frequently *micel-gemoth*, the great assembly, and frequently the *witenagemoth*, that is, the assembly of the wise men. They were designated, after the conquest, by the Latin names of “*commune concilium regni, magnum concilium regis, curia magna, conventus magnatum vel procerum, assisa generalis, communitas regni Angliæ, et parliamentum*”—(the common council of the realm, the king’s great council, the great court, the assemblage of the great men or peers, the general assize, the commonwealth of the realm of England, and parliament)—the name finally adopted, from the French *parler*, to speak, because it was a deliberative assembly.(2)

VI.—*Parliament.*

Lord Coke supposes this word to be composed of the word *parler la ment*, to speak one’s mind; but Mr. Barrington observes, “Lord Coke’s etymology of the word parliament, from speaking one’s mind, has been long exploded. If one might presume,” he adds, “to substitute another in its room, after so many guesses, by others, I should suppose it was a compound of the two Celtic words *parley* and *ment*, or *mend*. Both these are to be found in Bullet’s Celtic Dictionary, published at Besançon, in 1754, 3 vols. folio. He renders *parley*, by the French infinitive *parler*, and *ment*, or *mend* by the words *quantité, abondance*. The word parliament, therefore, being resolved into its constituent syllables, may not improperly be said to signify what our Indians of North America call a great Talk.”(3)

VII.—*Constitution of Parliament.*

The constitution of parliaments has been subject to several changes since their first commencement in England. Among the Saxons the king elected whom he

(1) De Mor. Germ. c. 11; 1 Comm. 147.

(2) Chron. Sax. passim.; Co. 1 Inst. 110 a.; 2 Inst. 156; 4 Inst. 2; 1 Com. 147.

(3) Barring. Obs. Anc. Stat. 48.

wished to compose his council, sometimes choosing only the prelates, when the matter of deliberation was purely ecclesiastical, sometimes his thanes or nobles, when the matter was of a political nature, and sometimes both, when the matter was of general interest. These were chosen to be his advisers on account of their dignity, rank, or office; besides which, there is also frequent mention of the *witan*, or wise men, who from their knowledge and experience, were regularly called to his councils, and were, probably, for the most part, officers of the crown. The people are also occasionally alluded to, as taking part in these assemblies. They are expressly named in the council held by Ethelwolf, in the year 855, when a tenth was given to the church by the king, *cum baronibus, thanis et populo*—(together with the barons, thanes, and commonality)—so likewise in the laws of Edward the Confessor, we find them mentioned in this manner. “*Hoc enim factum fuit per commune concilium et assensum omnium Episcoporum, Principum, Procerum, Comitum et omnium Sapientum Seniorum et populorum totius regni*”—(this was enacted by the common council and assent of all the bishops, peers, and all the sages, elders and commonality of the whole realm). Dugdale argues, that the commons had a share in the legislature, from the circumstance that several old and decayed boroughs send members to parliament, though it cannot be shown that those boroughs have been of any reputation since the conquest, much less that they have obtained the privilege by the grant of any succeeding king; on the contrary, those of ancient demesne do prescribe, in not sending burgesses to parliament, which prescription proves that there were some boroughs before the conquest. Sir Edward Coke uses the same argument.(1)

On the introduction of the feudal system by the Conqueror, both the obligation and the right of attendance in parliament became clearly defined. All who held lands of the king, *per baroniam*, were called tenants *in capite*, or *barones*, and were bound, by their tenure, to attend the king in parliament.

These *barones*, or lords of parliament, as they were otherwise called, were distinguished into spiritual and temporal. The lords spiritual included archbishops, bishops, abbots, and priors, who held the king, by barony, and were called by writ to parliament. In the time of the Saxons, the bishops and abbots held their lands free from all secular service, but being charged by William I. with the same obligations as the laity, they became tenants *in capite*, and were bound to attend the Curia Regis, and afterwards the parliament.

VIII.—Attendance in Parliament.

Attendance in parliament was indeed, at this period, a thing less sought for by the commons than by the kings, who were well pleased to give the people a voice in the legislature, as a check upon the domineering temper of the nobility. The commons, on the other hand, feeling how little weight they had in the deliberations of the parliament, considered the burden of attendance to be greater than the honour.(2)

(1) LL. Ed. Conf. c. 8; Dugd. Orig. Jur.; 9 Co. Pref.

(2) Crabb's Hist. Eng. Law, c. 16.

IX.—Frequency of Parliaments.

As to the frequency of parliaments it is difficult to determine precisely what was the practice among the Saxons. The Mirror(1) says, it was ordained by Alfred, that there should be a meeting of these councils twice a year, or oftener if needful, to treat of the government of God's people, how they should keep themselves from sin, should live in quiet and receive right; but it may more reasonably be inferred from the records of these times, that the Saxon kings assembled councils as often as the exigency of the times required, particularly when the defence of the country against invaders called for the united efforts of all subjects.(2)

X.—Manner of Assembling Parliament.

The manner of assembling parliaments was, as before observed, by means of the king's writ or summons. Whenever the king *de advisamento concilii sui*, that is, by the advice of his privy council, resolved to have a parliament, writs of summons were sent out of Chancery for the purpose of convening this assembly. On the introduction of special writs, their style was varied, according to the quality of the persons summoned. Before the reign of Edward III. the temporal lords of parliament were commanded by the king's writ to appear in *fide et homagio quibus nobis tenemini*—(upon the faith and homage whereby you are bound to us);—but in this reign they were sometimes commanded in *fide et homagio*—(upon faith and homage)—and sometimes in *fide et ligeancia*—(upon fealty and allegiance)—according as they were barons by tenure or otherwise; since that period they have been constantly commanded in *fide et ligeancia*, because, as Lord Coke observes, there are no feudal baronies in respect whereof homage is to be done. Ecclesiastical barons were commanded by the king's writ to be present in *fide et dilectione quibus nobis tenemini*—(upon the fealty and love whereby you are bound to us). The writs of the law officers, who were called to give their assistance in the upper house, but had no voice, had the words “ut intersitis nobiscum et cum cæteris de concilio nostro”—(that you be present with us and others of our council)—and sometimes, “nobiscum super præmissis tractaturi vestrumque consilium impensuri”—(to treat with us and give your council upon the premises);—but the writ to the barons of the Exchequer ran thus, “quod intersitis cum prælatis, magnatibus et proceribus super dictis negotiis tracturi vestrumque consilium impensuri”—(that you be present with the prelates and peers, to treat and give counsel concerning the matters aforesaid)—a difference which still continues.(3)

XI.—Sessions of Parliament.

The sessions of parliaments were for many reasons short, at the early periods just referred to, particularly as the public business was despatched without much debating. In proportion as the two houses advanced towards independence, the proceedings in parliament became more orderly and also more multifarious. For some time after the *barones minores*, or commons, were summoned to parliament,

(1) Mir. des Just. c. 1, s. 3.

(2) Spelm. Concil. vol. i.; Chron. Sax. passim.

(3) Regist. 261; Co. 4 Inst. 3.

they continued to sit in the same house. But this was not uniformly the case, for in the reign of Edward I. the representatives of cities and burghs, who were summoned to the parliament at Shrewsbury, A.D. 1283, appear to have met at the village of Acton Burnell, while the rest of the parliament sat at Shrewsbury. It should seem, likewise, that in the same year, there were three parliaments sitting at the same time in three different cities, namely, York, Durham, and Northampton, to each of which the king sent commissioners to represent his person, while he was engaged in the conquest of Wales. But although sitting in the same place, yet these two estates of the realm gradually became more distinct, and, as early as the reign of Edward III., their deliberations were carried on apart.(1)

XII.—Opening of Parliament.

On the opening of parliament, the king, or those appointed to represent him, declared, in the presence of the lords and commons, the purpose of their meeting for the redress of matters touching the church, and the affairs of England. If a bishop was lord chancellor, he took a text in Latin, and discoursed upon it; but when a judge was lord chancellor, he recited the causes of parliament in the form of an oration, after which the commons were required, in the king's name, to make choice of their speaker, the king having previously nominated, as in the case of a *congé d'élire* of a bishop, some discreet and learned man whom the commons might elect.(2)

XIII.—Humble Address of the Speaker.

This being done, the person on whom the choice fell used, with great profession of his own inability, to entreat them to fix on some one of greater ability, to undertake so weighty a charge, and after being constrained to take the chair, he then prayed leave to disqualify himself before the king: wherefore, on being presented to the king, in the lord's house, he used to renew his protestations of inability to discharge the office. Sir John Cust was the last speaker who, in 1761, adopted this language of diffidence, since whose time the ceremony of addressing the throne by the speaker has been laid aside.(3)

XIV.—Petitions of the Commons.

But this tone of modesty and humility was not confined to the speaker of the lower house, for it was adopted by the commons in all their proceedings, both towards the king and the upper house. Their wishes and suggestions were conveyed in the shape of petitions, which usually began with "*Vos poveres communes prient et supplient*"—(your poor commons beg and pray)—and concluded with the conjuration "*Pour Dieu et en œuvre de charité*"—(for God's sake, as an act of charity). To the upper house they looked for guidance and instruction; and when any matter of difficulty came before them, they petitioned that certain prelates and barons might be allowed to come to them, and assist them with their advice.(4)

(1) Hody's *Convocat.* p. 153.

(2) Co. 4 Inst.

(3) Ibid.

Parl. Hist. i. 135.

XV.—Subsidies.

Whether the parliament had any voice in the levying of aids before the reign of King John it is not easy to ascertain. Many, judging from what has since been obtained, take it for granted that no taxes were ever levied in England without the assent of parliament; but this does not appear to have been the case, at least after the Conquest. Among the Saxons, the ordinary revenue of the crown was probably not more than sufficient for the supply of the king; and, as the country was perpetually exposed to hostile invasions and attacks, all the supplies necessary to meet the extraordinary expenses of defending the country were voted in their national councils. After the Conquest, the power of the crown, and also its resources, were greatly enlarged; so that few extraordinary supplies were wanted, and these few were levied at the discretion of the kings. Scutage, as all historians agree, was assessed, on its introduction by Henry II. in whose time the reliefs of barons were also estimated at the king's pleasure. It is also clear from the whole tenure of Magna Charta, that the object of the barons was only to define the feudal burdens to which they were subject by the common law; and that application to parliament was not required to be made only in case any extraordinary supply was wanted. Although the clause on this subject was omitted in the charters of Henry III., yet the necessities of this prince compelled him more than once to have recourse to parliament for supplies.(1)

XVI.—Questions of General Policy brought before Parliament.

But the deliberation of parliament were not confined to matters of Legislation or revenue. It was now begining to be the regular practice to consult parliament on matters of peace and war, treaties and other points of general policy.(2) Thus, in the 28th year of this king, the whole house was informed that there was a treaty of peace between the king and the French, and it was demanded of the Commons whether they would agree. Their answer to this was, that therein they wholly submitted themselves to the orders of the king and his nobles. From this circumstance, it is clear that the Commons were at present unused to take cognizance of such things.(3) At the same time as they were called together to consult for the good of the nation, or as the writs of summons stated *ad audiendum faciendum, et consentiendum*—(to hear, act, and consult);—this indefinite commission gave them a licence to offer whatever they thought proper in the shape of petitions, which they sometimes did without sufficient discretion.(4) The barons in the the reign of Henry III. wanted to regulate the kings household, and to appoint the great officers of the crown, as the chancellor, justiciary and treasurer; but this the king absolutely refused, at the same time sharply rebuking them for their unreasonableness. In the reign of this king the Commons made a similar effort, and at first with more success. They petitioned that the chancellor might be chosen in parliament; and the king, in his over compliance, was induced to

(1) Glanv. 1. 9. c. 4.
 (2) Hist. Parl. ii. 286.
 (3) Co. 4 Inst. 14.
 (4) Parl. Hist. i. 50.

grant their request ; but, repenting of the concession that he had made, he, by his writ, repealed what had been passed by statute ; so indefinite and unsettled was the prerogative of the crown and the jurisdiction of parliament at this period.(1) At the same time this king lent a willing ear to the petitions of the Commons, and in this form they offered him their advice on almost every subject of domestic policy.(2) Some of these petitions tended to restrict the king's prerogative in different ways, as in the following cases :

Commons.—That every man for debts due to the king's ancestors, may have therefore charters of pardon, of course out of the Chancery.

King.—The king granteth.

Commons.—That certain persons, by commission, may hear the accounts of those who have received wools, moneys, or other aids for the king, and that they may be enroled in the Chancery.

King.—It pleaseth the king, so as the treasurer and the lord chief baron may be joined in the commission.

Some petitions had respect to the administration of justice, as :

Commons.—That all men may have their writs out of the Chancery for only the fees of the seal, without any fine, according to the great charter, *nulli vendemus justitiam*—(we will sell justice to no man).

King.—Such as be of course, shall be so ; and such as be of grace, the king will command the chancellor to be gracious.

Commons.—That the chancellor and other officers of state there named in the records may, upon their entrance into the said offices, be sworn to observe the laws of the land and Magna Charta.

King.—The king willeth the same.

Commons.—That the justices of the peace be of the best of every county, and that, upon the displacing any of them, others be put in at the nomination of the knights of the said county ; that they sit at least four times every year ; and that none be displaced, but by the king's special command, on the testimony of his fellows.

King.—This first petition is reasonable, and the king will see that it be done.

From this specimen of petitions and answers the reader may form a judgement of the character and office of the House of Commons at this period.

XVII.—House of Lords a Court of Judicature.

Until the reign of Edward I. petitions were commonly addressed *à notre seigneur le roi et à son conseil*—(to our lord the king and his council),—and appeals were said to be made *coram rege ipso in concilio*—(before the king himself in council),—but when petitions began to be received in parliament, then they were said to be *coram rege in parlamento*—(before the king in parliament).—Hence, by degrees, the House of Peers became a regular court of appeal ; and by the stat. 14

(1) Hist. Parl. ii. 245.

(2) Hist. Parl. ii. 239.

Ed. III. st. 1. c. 5,(1) it was ordained that in every parliament there should be chosen a prelate, two earls, and two barons, who should have commission from the king to hear, by petition delivered to them, all complaints of delays, as well in the Chancery as in the King's Bench and Exchequer; and, after examinations into the causes of such delays, they were to proceed to take a good accord, and make a good judgment. And according to such accord, the tenor of the record, with the judgment accorded, were to be remanded before the justices where the plea depended, for them to give judgment according to the record. It was further ordained, that in case of doubt and difficulty, the matter was to be referred to the whole parliament, whereby the judicial character of the upper house was fully established; and, after a time, all causes might be removed from the court of King's Bench and the court of Exchequer Chamber to the House of Lords, as a tribunal of *dernier resort*.

XVIII.—Criminal Jurisdiction.

The criminal jurisdiction of parliament was put on the footing that it had been among the Saxons. The thanes heard and determined all matters, both civil and criminal, that concerned persons of their own condition. The introduction of the trial by duel, at the Conquest, interrupted this wholesome practice, which the laws of Henry II. brought again into favour, and the provision in the great charter finally re-established.

XIX.—Impeachment by the Commons.

The Commons now, likewise, took a part in judicial proceedings so far as to become public accusers for high crimes and misdemeanors, which was afterwards known by the name of impeachment.(2) The first person on record, who was impeached by the Commons, was Sir John Lee, at the latter end of this reign, for malpractices while steward of the household. This was followed by many impeachments which were in after times tried by the peers.

XX.—Liberty of Speech.

Another privilege was liberty of speech, which was particularly solicited of the king, by the speaker, at the opening of a new parliament; this was granted, under certain restrictions suited to the subordinate part which the lower house had at that time assigned to them.

XXI.—Law of Landed Property.

Among the matters of a private nature which engaged the attention of the legislature, that of tenures holds the first place. Tenants *in capite* were now permitted to alienate on the payment of a reasonable fine. By this enactment the king's

(1) Stat. 14 Ed. III. st. 1. c. 5.

(2) 42 Ed. III. Rot. Parl. 20.

tenants were relieved from the hardship of having their lands seized into the king's hands by way of forfeiture, according to the old law, in case they aliened without licence.(1)

XXII.—*Commission of Nisi Prius.*

The commission of Nisi Prius underwent some parliamentary alterations, which put it into the form in which it has ever since remained.(2) By a statute in the last reign, the commission of Nisi Prius was granted only in cases where the demandant prayed the same, but now it was enacted, that such inquests should also be taken at the suit of the tenant in a plea of land.(3) A Nisi Prius had heretofore been granted only before particular justices commissioned for that purpose; but it was now enacted that it should be granted before any justice of the King's Bench or Common Pleas, or the chief baron of the exchequer, if he were a man of the law, which it seems at this time he was not always. If any of them went into those parts, and if neither the justices nor the chief baron went, then it was to be granted before the justices assigned to take assizes in those parts, so that one of the justices assigned was a justice of the one bench or the other.(4) It is moreover enacted, that a tenor of the record should be made, since called a Nisi Prius record, containing an entry of the declarations, pleading, and issue or issues, upon which the judge returned the verdict, making what, from the initial word in the return, has since been called a *postea*.

XXIII.—*Justices of the Peace.*

Among the numerous provisions which were made in this reign for the preservation of the peace, the most important was that of appointing magistrates, at first called Keepers of the Peace, afterwards Justices of the Peace,(5) with power to restrain offenders, rioters, and other barrators, and to pursue, arrest and chastise them according to their trespass and offence, and to cause them to be imprisoned and duly punished according to their discretion.(6)

XXIV.—*Quarter Sessions.*

These justices were to consist of one lord and three or four more of the most worthy in the country, who were to hold their sessions four times a year, which were afterwards known by the name of the Court of General Quarter Sessions. The jurisdiction given by the statute to these sessions extended to the trying and determining all felonies and trespasses whatsoever, with this restriction, that in cases of difficulty they were not to proceed to judgment but in the presence of one of the justices of either bench or of the assize.

(1) Stat. 1 Ed. 3. c. 12.

(2) Stat. of York, 12. Ed. 2. Stat. 4. Ed. 3. c. 2.

(3) Stat. 14 Ed. 3. c. 16.

(4) Reeves' Hist. ii. 427.

(5) Stat. 34 Ed. 3.

(6) Stat. 36 Ed. 3.

XXV.—Pleadings in English.

Another regulation was also made in the same year of this king on the subject of pleading, requiring that all pleas should be in English rather than in French,(1) a language which, owing to the encouragement first given to it by the Conqueror, and afterwards to the close intercourse subsisting between the two countries, crept into use, and was even after this time necessarily retained on account of its fitness for the purpose. But the French was not at any time employed in all law proceedings. Some of the Conqueror's laws are in Norman French; but those which were made during his reign in England were in Latin, as were also all writs, charters, and public instruments.(2) The same remark applies to all public documents in succeeding reigns until the time of Edward I. Indeed so prevalent was the use of the Latin, owing to the active part the clergy took in judicial proceedings, that the treatises of Glanville and Bracton, as well as others in the reign of Henry II. and Henry III. were composed in that language. The *Statutum Scaccarii* was the first statute in French, after which Latin and French appear to have been used indiscriminately, as suited the convenience of the parties: but the use of the French became by degrees the most prevalent. The law treatises of Britton and others, in the reign of Edward I. were written in French, as also the Mirror, in that of Edward II. In the reign of Edward III. the petitions and proceedings in parliament were in French, which notwithstanding this statute, continued to prevail for some time.(3)

XXVI.—Limitations and Remainders.

The doctrine of limitations and remainders were, in consequence of the statute *De Donis*, very nicely discussed in this day, and many of the principles of law in regard to landed property were recognised which have since obtained.(4) A practice appears to have commenced in this reign, of limiting an estate to the life of a man, remainder over to his right heirs; the object of which, probably, was to get rid of the feudal burdens, wardships, marriage, and relief; but the decisions of the court defeated this object;(5) for where an estate was given to the father for life, remainder to the first son and his wife in tail, remainder to the right heirs of the father, the father died, and then the eldest son and his wife died without issue, then the lord was permitted to avow upon the younger son for the relief, as heir of his elder brother, to the remainder in fee, notwithstanding the younger son contended that he came in as a purchaser, under the words, "right heirs of his father," and that the tail and the fee could not be *simul et semel*—(at one and the same time)—in the elder brother.

(1) Stat. 25 Ed. 3. st. 5. c. 15.

(2) Wilk. LL. Anglo-Sax.

(3) See Crab's His. Eng. Law, c. 15.

(4) Reeves' His. Engl. Law, iii. 7.

(5) 40 Ed. 3. 9.

XXVII.—*Devises.*

The liberty of devising lands by testament had been hitherto confined to particular boroughs and places according to certain customs; but we read of many cases in this reign upon wills of land, which appear to have been governed by the same rules as were afterwards established into law.(1) Thus it was held, as a settled rule in law, that a husband might give lands to his wife by will; but a wife was not allowed to devise lands to her husband, although she might, as in former times, with the consent of her husband, devise the moiety of his goods.(2) Sometimes lands were devised to executors, to make distribution for the good of the testator's soul, and, if the executors failed in so doing, the heir might enter, and have an assize.

A scrupulous regard was shown to the will of the testator, and more indulgence in the construction of testaments than in that of deeds.(3) When a remainder was limited *propinquioribus hæredibus de sanguine puerorum*—(to the prochein heirs of the blood of the children)—of the devisor, it was held that, upon the devisor dying, leaving two sons, who died without issue, and a daughter, who had issue-Isabel, and then died; that Isabel should take, being sufficiently described by the will.(4)

XXVIII.—*Warranty.*

The force of warranty was shown in some cases now that had not before occurred. If the uncle or other ancestor, or cousin collateral, who was not privy to the entail, aliened with warranty and died without heirs, so that the next issue in tail was become his right heir, such issue would be barred by his ancestor's deed with warranty.(5) This was afterwards termed collateral warranty, to distinguish it from the usual sort of warranty called lineal: not that the terms lineal and collateral had respect to the heir, whether lineal or collateral, but to the title which he had.(6) If the heir whether lineal or collateral, might by any possibility claim the land from him that made the warranty, then it was termed lineal; but if the ancestor by whom the warranty was made had no right to the land, the warranty was collateral to the title by which the estate was claimed.

There was one sort of warranty, however, since called warranty, commencing by disseisin, which was considered as no bar; as, when a guardian or tenant at will, aliened the land of the heir or the lessor with warranty, such alienation being equivalent to a disseisin, the warranty was void as against the heir or lessor.(7)

(1) Reeves' His. iii. 9.

(2) 44 Ed. 3. 33. Bro. Dose. 34.

(3) 38. Ass. 3. 39. Ass. 17. et passim.

(4) Reeves' His. iii. 10.

(5) Reeves' His. iii. 11.

(6) Co. 1 Inst. 370.

(7) 43 Ed. 3 7. Reeves' His. iii. 13.

XXIX.—*Action of Covenant.*

As to the writ of covenant lay for the recovery of land, or any thing issuing out of land, as also of moveables, it might be, either a real action, personal action, or a mixed action, that is, an action for the recovery of the land, or for the recovery of damages only, or of both.(1) Fines were commonly levied on actions of covenant, wherefore, the declaration, in such cases, ran thus, “à tort ne lui tient son fait—(wrongfully, nor doth he keep his covenant—), &c.

XXX.—*De Ejectione Firmæ.*

A new remedy for termors was now coming into use, called a writ *de ejectione firmæ* or a writ of ejectment, as it was afterwards called. As this writ at first lay only for damages, it was not so much considered, as it was when it went to the recovery of the term. This was in the nature of action of trespass.(2)

XXXI.—*Action of Trespass and on the Case.*

The action of trespass was now resorted to, where it appears never to have been before used; and by varying the form of the writ, so as to suit it to every man's case, according to the stat. Westm. 2, which authorized the framing writs *in consimili casu*; the writ of trespass or action on the case, was now become a remedy for every injury done to the person or property. The first action of trespass *sur son cas*—(upon his case)—mentioned, is to be found in the 22d year of this king, when an action was brought against a man, for that he had undertaken to carry the plaintiff's horse in his boat over the Humber, but that he overloaded his boat with other horses, by which overloading the plaintiff's horse perished, *à tort et damages*—(wrongfully and to the damage of the plaintiff).—(3)

XXXII.—*Replevin.*

The law of replevin was now put on the footing on which it has, with very few alterations, remained ever since.(4) Replevin was so called from *replegiare*, or *re* and *plegiare*, to deliver back upon pledges, the principal word in the writ, issued in Glanville's time to the sheriff, directing him, *replegiare facias*, to make deliverance of the cattle which had been taken in distress. The unjust taking or detaining cattle against gage and pledges, was called, by Bracton, in the language of the old law, *vetitum namium*, that is, a forbidden, or unlawful taking, and is classed by him among the *placita coronæ*—(pleas of the crown).—When any one complained that his cattle had been unlawfully taken or detained, he might either have the writ above mentioned, or, for the sake of expedition, he was allowed, by the statute of Marlebridge, to make a verbal complaint to the sheriff, and on giving him pledges *de prosequendo*—(of prosecution),—he or his officer would proceed to the

(1) Crabb's His. Eng. Law.

(2) Reeves' His. iii. 29.

(3) 22 Ass. 41.

(4) Crabb's His. Eng. Law, p. 116.

place where the cattle were detained.(1) If obstructed in the execution of his duty, he was armed with authority to raise the *posse comitatus*—(power of the county),—and to put the offender into prison, which, in those days of lawless violence, was frequently necessary.(2) If he could not find the cattle and it appeared that they were, as it was termed, *elongata*, eloiigned, or removed, there issued a process to take the distrainer's cattle to double the value, which was now called a *capias in withernam*, that is, a taking by way of reprisal; if this process failed there issued a *capias* against the person of the distrainer.(3)

XXXIII.—Trial *per Pais*, or by Jury.

As the trial *per pais*, or by jury, had thus gained ground on the old modes, all the circumstances and forms, belonging to this manner of determining questions, were now more minutely examined than ever, and alterations were made with the view of rendering it more efficient.

The circumstance of jurors being of the vicinity where the fact to be tried happened, was an indispensable qualification in the time of Bracton, it being presumed, that the jurors decided from a personal knowledge of the parties and transactions.(4)

XXXIV.—Challenging.

The taking exceptions to jurors was now called challenging, in Latin, *calumnia*, in the improper sense of making a charge. To challenge, probably derived from *call*, signifies here as much as to call, or single out a person, by way of objection to him.(5)

XXXV.—Treason.

Among the *placita coronæ*, or pleas of the crown, the most important was that of treason, termed by the Saxons *Hlafordsiwic*, *prodlio domini*, or the betraying ones lord. Treason, the term since used, contracted from the French *trahaison*, is derived from the Latin *traho*, to draw in, or betray, signifying properly the betraying of one to whom one owes fidelity. Thus Britton defines treason generally to be every mischief which a man knowingly does or procures to be done to one, to whom he is in duty bound, to be a friend. Offences which immediately affected the king's person or dignity, were comprehended by Glanville and subsequent writers under the name of *crimen læsæ majestatis* or *lese majesty*, called by the Mirror simply *majestie*, and by Bracton, *grande treason*, or high treason, in distinction from *petit treason*, or such offence as affected private persons. Before the statute of the 25th of this reign, many things were considered treason which were not afterwards considered as such. *Lese majesty*, according to the above-mentioned writers, comprehended killing the king, and even imagining his death;

(1) Stat. Marl. 52 Hen. 3. c. 21.

(2) Bract. 157. Flet. 1. 2. c. 37.

(3) 43 Ed. 3. 26. Bract. ubi. supra.

(4) Crab's His. Eng. Law, p. 158.

(5) See Crabb's His. Eng. Law, c. 19.

promoting a sedition in the army and the kingdom ; *crimen falsi*, or falsifying the king's seal ; the concealment of treasure-trove ; and even the breaking of any of the laws and statutes of the realm, was reckoned by Bracton as a high presumption against the king's crown and dignity.(1)

XXXVI.—*Petit Treason.*

The concealment of treason was, by the old law, held to be treason ; for he who knew another to be guilty of treason was to go instantly, says Bracton, or send, if he could not go to the king himself ; or, if he could not, to one of the familiars of the king, and relate the whole matter. He was not to stay two nights or days in a place, nor attend to any business of his own, however urgent. After this statute, the bare concealment of treason was not treason, where there was no proof of approbation or consent. This was afterwards called misprision of treason, and was not comprehended under the crime of high treason.(2)

If what was designed was not brought about it would be no less treason, by a maxim of law then generally admitted, that *voluntas reputabitur pro facto*—(the will shall be taken for the deed) ;—so that, if a man had compassed or imagined the death of the king, and had declared his compassing by words or in writing, that was treason by the old law ; but, by the statute of treasons it was necessary that the compassing should be declared by some overt act.(3)

Using the king's seal without warrant, was anciently reckoned among the higher kinds of treason ; as also clipping or otherwise impairing the king's coin ; but the statute restricts the offence of treason to the counterfeiting of the king's seal or money.(4)

XXXVII.—*Homicide.*

Homicide, *homicidium*, from *homo* and *cædes*, that is, the slaughter of a man, was the general name for killing a man, which was an offence that partly concerned the party injured and partly the king, whose peace was broken. It was distinguished by Bracton from the cause and manner of killing, into homicide *ex justitiâ*, *ex necessitate*, *ex casu*, and *ex voluntate*. Homicide, *ex justitiâ*, was what took place by the sentence of a court, and according to the forms of law ; which, to be justifiable, required to be done in due order and course of law. Homicide *ex necessitate* or *se defendendo*, was justifiable if necessity was inevitable, as in defence of one's own person. Homicide *ex casu*, or *per infortunium*, that is, by misadventure, was, where a person threw a stone at an animal, and a person accidentally passing was struck by the stone and killed ; or when a tree was falling, and it fell upon the passer-by, and killed him. It was here to be considered, not only whether the act was in itself lawful and proper ; for, if the act was unlawful, then it was held to be murder, or voluntary homicide : as if A. meaning

(1) Bract. c. 8. ; Glanv. 1. 14. c. 1. ; Bract. 118. ; Flet. 1. 1. c. 22. ; Britt. ubi supra ; Bract. 119. 120.

(2) Co. 3 Inst.

(3) Ibid.

(4) Bract. Brit. and Flet. ubi supra.

to steal a deer, shot at it and killed B.(1) It was also to be considered, whether due caution had been used, or whether it was a place of great resort. So likewise, if an act was lawful and proper; as if a man corrected his scholar, without exceeding the usual bounds, homicide was not to be imputed to him.

XXXVIII.—*Chance Medley.*

This kind of homicide, which is now called manslaughter, was sometimes denominated chance medley, when the killing of a man was *se defendendo*, in self-defence, in a medley, that is, scuffle, affray, or sudden quarrel. Voluntary homicide was when any one of certain knowledge, and by a premeditated assault from anger, malice, or gain, killed another, *nequiter* and *in felonia*—(wickedly and feloniously)—against the king's peace. If this was done in an affray, it was equally felonious with a secret and deliberate killing; and all who were present were looked upon as *participes criminis*—(accomplices in the crime), according to old law.(2)

XXXIX.—*Murdrum.*

If the act was perpetrated in secret, it was termed *murdrum*, as in the time of Glanville, who divides homicide into simple homicide and *murdrum*. This distinction is doubtless derived from the time of Canute, when, to prevent the secret killing of his countrymen, the Danes, he made a law that if any one was killed, and the slayer escaped, the person killed should be taken for a Dane, unless proved to be English by his friends and relations, and on failure of such proof, that the *vill* should pay forty marks for the death of the Dane.(3) The Conqueror revived this law in favour of Frenchmen, and imposed a similar fine, called *murdrum*, upon the country, unless the killed was known or Englisherie was duly presented; that is, the party was proved to be an Englishman, and not a Frenchman. As the purpose of this law had long ceased, presentments of Englisherie were abolished by a statute in the fourteenth year of this king.(4)

XL.—*Arson.*

The *crimen incendii*, burning, or arson, as it was now called, comprehended not only the burning a city, town, house, man, beast, or other chattel, feloniously, in time of peace, from hatred or revenge; but if any one put a man into the fire, whereby he was burnt or blemished, although not killed, he was to be dealt with as a burner. Arson, called by the Saxons *bernet*, was among the number of irredeemable offences.(5)

(1) Bract. 120.

(2) Bract. ubi supra, 120. Brit. c. 7. Flet. 1. 1. c. 30.

(3) LL. Inæ. c. 33, Bract. 131. Brit. c. 7. Flet. c. 23. Mirr. c. 1. s. 11.

(4) Leg. Confes. c. 15. 16. LL. Gul. 1. c. 26. apud Wilk. Bract. 134.

(5) Brit. c. 19. Mir. c. 1. s. 8.

XL I.—*Theft.*

Theft, *furtum*, was the general name for the taking the property of another, provided it was done, *animo furandi*—(with intent to steal),—for otherwise no theft was committed.(1)

XLII.—*Burglary.*

Under burglary was comprehended, not only the breaking of a house, but the felonious assault upon persons in their houses, whether the assault was with design to kill, rob, or beat; also, the forcible entry into a person's house, doing violence there against the peace, by day as well as by night, whether the house was broken or not. Burglary is mentioned in the laws of the Saxons under the name of *ham-socne*, from *ham*, home, and *socne*, a privilege, signifying the violation of a person's home; and also under that of *husbrec*, housebreaking, *infractio domus*.(2) Burglars are called by Britton *burgessours*, and by Bracton *burglatores*, which, from *burg*, a burgh or town, and *lator* or *latro*, a robber or breaker into, signified properly a robber of towns or houses, as distinguished from one who robbed from the person. Burglars are described by Britton to be such as feloniously, and in time of peace, break churches or the mansion-house of others, or the walls or gates of cities. The writers in this day make no mention of the time of night as a characteristic of this crime.(3)

XLIII.—*Larceny.*

The last species of theft, called in Latin *latrocinium*, in French *larcine* or *larcyne*; in English, larceny; is described by the Mirror to be the treacherously taking from another a moveable or corporeal thing, against his will, by the evil-getting possession thereof.(4) Britton distinguishes larceny into grand and petty: when the thing stolen was above the value of 12*d.*, it was grand larceny, and a capital offence; but, if it was 12*d.* or under that sum, it was petty larceny, and, by stat. West. 1, a bailable offence. This distinction of theft, as to the value of the thing stolen, was first made in the laws of Athelstan.(5)

XLIV.—*Rape.*

The crime of *raptus virginum*, or rape, was not confined to virgins or unmarried women; but was, as the Mirror defined it, *chascun afforcement de feme, de quelle condition qu'elle soit*—(every ravishment of a woman, of whatever condition she may be),—so that even a prostitute was by law protected from such acts of violence; and such was the law in the time of Bracton; but the law required then, as it does now, that a woman who had suffered an injury of this kind should establish the charge by the most indubitable evidence, and, while the fact was recent,

(1) Bract. 120.

(2) Bract. 144. Mir. c. 109. Brit. fol. 17.

(3) LL. Can. c. 6.

(4) Mir. c. 1. s. 10.

(5) Brit. c. 24. Flet. 1. 1. c. 36.

should go to the next village and show the injury that had been done to her. She was also to do the same to the chief officer of the hundred, the coroner, or the sheriff; and lastly, she was to make her complaint publicly at the next county court, which was to be described in the coroner's roll. Besides, it was necessary to prove the completion of the offence, which was done by four *legales feminae*—(lawful women).(1)—By the Norman law, this matter was tried by the inspection of seven matrons. A charge of rape could not be sustained if the woman were proved to have given her consent. It was also a good plea, in an appeal of rape, to say that before the time of the supposed ravishment, the woman had been the mistress of the ravisher; also, if a woman was pregnant by her ravisher, it was considered, according to Britton, to be a proof of consent.(2) In this respect the common law differed from that of the civil law, where the consent of the woman did not alter the nature of the offence; besides, the forcible abduction of a woman was, among the Romans, equally penal with that of deflowering her. Besides, by the common law, the man might, at the discretion of the judge, escape the penalty of his offence, if the woman consent to marry him.(3)

XLV.—*Mayhem.*

Another offence against the person, frequently mentioned in that day, was that of *mayhem*, in the Latin of the middle ages *mahemium*, from the French *mehaigner*. By *mayhem* was understood any corporeal hurt by which a man lost a member, so as to make him less fit for fighting, as the loss of a hand, an arm, or finger, foot, eye, front teeth, &c.; but the striking out the grinders, or cutting off an ear, was not a *mayhem*, because a man might defend himself equally well in battle without them.(4) Castration was, however, adjudged to be *mayhem*, although committed by a husband upon the adulterer with his wife. Among the laws of the Saxons, particular cognizance was taken of injuries done to the person; but the distinction between *mayhem* and ordinary wounds was, in all probability, derived from the Normans, in whose code we find it described in nearly the same terms.(5)

XLVI.—*Striking a Clerk.*

Common assaults and batteries were, for the most part, treated as civil injuries, except in aggravated cases, where the sacredness of the person or place was violated. Since the Conquests, as well as before, the common law afforded a more than ordinary protection to the persons of the clergy; and, in conformity with this, we find it expressly enacted by the statute of *Articuli Cleri*, in the 9th year of Edward II. that if any person lay violent hands upon a clerk, he was to be indicted at the suit of the king for a breach of the peace; and also subjected to the censures of the church imposed upon him in the spiritual court; besides which, he might be sued in the temporal court for the special damage sustained by the party injured.

(1) Mir. c. 1. s. 42. Bract. 166.

(2) Bract. 147. Brit. c. 1. Grand Cout. de Norm. c. 67.

(3) Cod. 9. tit. 13. (4) Glanv. 1. 14. c. 6. 148.

(5) Bract. 144. Brit. 48. Flet. 1. 1. c. 38. Mir. c. 4. Grand Cout. de Norm. c. 79. Co. 3 Inst. 118.

XLVII.—Striking in Courts.

For a similar reason, out of regard to the sacredness of a court of justice, where the king's majesty resided, striking in the king's courts was treated as a criminal offence of more than ordinary magnitude, as it had been in the time of the Saxons.

XLVIII.—Usury.

Usury was considered a heinous offence in those days; but it does not appear to have been prevalent among the Saxons, as we find no cognizance taken of it before the reign of Edward the Confessor, when the growing luxury of the age, and corruption of morals, had introduced extravagance and given encouragement to usurers.

XLIX.—Forestalling.

Forestalling was another offence at common law, which was looked upon in a heinous light. The word is derived from *fore* or *fare*, a way or passage, and *stall*, an impediment, signifying an interception of goods in their way to the market and comprehended under it every means, which was taken to enhance the common price of any merchandise, whether by spreading false rumours or buying things in a market before the accustomed hour, or by buying and selling again the same thing in the same market; or engrossing, that is, buying up all things in large quantities, to sell again wholesale.(1) To prevent this offence, a law of the Saxons forbade any thing above the value of twenty pence to be sold without any town, and that all bargains were to be made in the open market, and in the presence of the borough reeve, or some trustworthy person. A similar law is to be found in the code of the Conqueror.(2) Among the ancient statutes, is one ascribed to Edward I., against *forestellarii*, who, for the first offence, were to be grievously amerced; for the second offence, to be condemned to the pillory; for the third offence, to be imprisoned; and for the fourth, to abjure the *vill*. By a statute in this king's reign, all victuallers were obliged to sell their commodities at a reasonable price.(3)

L.—Felony.

Every capital crime, not excepting treason, was, before the reign of this king, included under the name felony; but it was resolved that, in the king's charters of pardon the word felony should extend only to common felonies, and not comprehend treason under that name.(4) Felony, in the Latin of the middle ages *felo-nia*, is supposed, by Spelman, to be of feudal origin, and derived from the German words *fee* and *lohn*, a reward and value, signifying any act which was as much as

(1) 43 Ass. 83. 3 Inst. 195.
(3) LL. Will. Conq. c. 60.

(2) LL. Ethel. c. 12.
(4) Co. 3 Inst. 15. Spelm. Gloss. in Voc.

a man's fee was worth ; because, for every felony a man forfeited his fee ; but Lord Coke derives it from the Latin *fel*, gall, or malignity, signifying what was done, *felleo animo*—(out of a malignant spirit.)(1)

I.—*Standing Mute.*

Standing mute, or refusing to plead, on a criminal charge is first mentioned in the reign of Edward I., when the punishment for this offence, called *peine forte et dure*, or the penance, is treated of by Fleta and Britton, and is expressly ordained by the stat. Westm. I, which directed that those who could not put themselves on inquests of felonies, should be put *en la prison forte et dure*, by which, as it is explained by those writers, it was understood that they were to lie barefooted, ungirded, and bareheaded, in their coat only, in prison, upon the bare ground, continually night and day, that they should eat only bread made of barley and bran, and drink only water, that they should not drink on the day they ate, nor eat on the day they drank, and that they should be fastened down with irons, until they prayed that they might put themselves on their trial.(2)

In the reign of this king, persons standing mute appear to have been hanged or put to their penance, according to the circumstances, at the discretion of the court.(3)

LII.—*Perjury.*

Before the Conquest there appears to have been no distinction between perjury in witnesses, and that in jurors, probably because all were looked upon as witnesses. As the character of a witness and a juror gradually became more distinct, the punishment of perjury in the one was not so severe as in the other. Witnesses, when convicted of perjury, were punished, sometimes with the forfeiture of all their goods, sometimes with banishment, and sometimes only with a fine ; but when, as before observed, perjury affected the life of a man, it subjected the perjurer to the pains of homicide. It is also worthy of observation, that the subornation of perjury was itself perjury.(4) The punishment of perjury in jurors was very severe, for the judgment against them was twofold, namely, at the suit of the party, wherein the plaintiff recovered damages and the defendant was imprisoned, and at the suit of the king, if the parties were convicted. The judgment, which was called a villainous judgment, was, that they should lose their *liberam legem* ; so that they could not be put on any assize or jury, nor their testimony as witnesses be taken ; if they had any thing to do in a court they were to make their attorney ; they were to forfeit all their lands and goods to the king ; that their lands were to be wasted, their houses razed, their trees rooted up, and their bodies committed to prison, which judgment was called villainous, because it brought the party into a state of villainy and shame.(5)

(1) Co. 3 Inst. 56.

(3) 21 Ed. 3. 18.

(2) Brit. c. 4. Flet. 1. 1. c. 24.

(4) Mirr. c. 4. s. 8.

(5) Brit. 14.

Spreaders of false reports were not punished so severely now as in the time of the Saxons. By the stat. Westm. 1. they were to be imprisoned until they discovered the authors of the tales.(1)

LIII.—Accessories.

As to the law respecting principal and accessory, it has already been stated, that in high treason, all who gave their aid, counsel, and consent, were, by the common law, considered as equally guilty; whence it became a maxim in law, that in high treason there were no accessories, but all were principals. According to Bracton, the aider and abettor in other crimes, as homicide, or robbery, &c., whether present or absent, when the fact was committed, was only an accessory, and the same opinion was held by some judges in this reign; but the better opinion, which afterwards prevailed, was, that all who were in company in any place or assembly, should each be held as principal, although he actually did no ill. This was agreeable to the Saxon laws, by which all who were present at the death of a man, were considered as *participes criminis*—(accomplices in the crime).—The lending of arms to a man to commit homicide made a man an accessory, according to another law of the Saxons.(2)

If any one received, aided, or favoured, *receptavit et confortavit*, a felon, knowing him to have committed felony, he was held to be an accessory, or, as Bracton terms him, *receptor malorum*—(an entertainer of evil persons).—But if he aided him *per bon parol*—(by advice or information),—or suit, or sent letters for his deliverance, this did not make him an accessory, this being considered a great misprision only. There appears to have been no such distinction among the Saxons; the least favour shown to a thief, subjected a man to be dealt with as a thief.(3) But if a wife received her husband, knowing him to be a felon, this did not make her an accessory, on account of the duty and love she was supposed to bear towards him.(4) This is a piece of the old Saxon law which was still retained.(5)

LIV.—Indictments.

The prosecution by appeal was now beginning to go out of use. Appeals *de pace*, *plagis et imprisonmento* were now nearly superseded by actions of trespass. Capital appeals, where the duel was resorted to, were subjected to various restrictions, imposed by statute or by the common law, and in proportion as wager of battle was discouraged, they shared its fate. By the same rule as the trial by jury was encouraged, indictments came more and more into use.(6)

Indictment, in French *enditement*, and the Latin of the middle ages *indictamentum*, from *indico*, to show, was an accusation at the suit of the king. It is first mentioned by that name by Bracton, and is described by him as a proceeding

(1) Stat. Westm. 1. 1. Ed. 1. c. 34.

(2) Bract. 120. 25 Ed. 3. 44. Stanf. P. C. 40. LL. Alf. c. 38. Wilk. LL. Anglo. Sax. 44.

(3) Bract. 138. 26 Ans. 47. Co. 3 Inst. 139.

(4) Co. 3 Inst. 108.

(5) LL. Inæ. 50.

(6) Hawk. P. C. 1. 2. c. 23.

per famam patriæ—(neighbourhood rumour or suspicion).—This was probably the same as the *fama publica*—(popular rumour or suspicion)—of Glanville, which was a suspicion entertained by grave and good men, deserving of credit, that raised a presumption against the party, and led to the inquest by the grand jury, in the form and manner before stated.(1)

The inquisitions were likewise to be in writing and to be framed with all possible deliberation, and in due form. The presentment of offences was, as before observed, peculiar to the office of the *grande inqueste*, as the grand jury was now called.(2)

LV.—*Hue and Cry.*

When an offender absented himself immediately after the fact, it was usual, according to the old law, to raise *hutesium et clamorem*, hue and cry; and a suit called fresh suit, was made after him, from town to town, until he was taken; and in default of so doing, the township was in *miserericordia*—(in mercy, i. e. liable to amercement or fine).—According to the law, as it subsisted in the time of the Saxons, and sometime after the Conquest, the fugitive, if he did not immediately surrender himself, was declared an outlaw without any further trouble; but in the time of Bracton, it had become usual to proclaim him five several times in the county court, and, in case of his non-appearance on the fifth proclamation, sentence of outlawry was pronounced against him (3)

When a person was outlawed, whoever fed or harboured him was subject to the same penalty as the outlaw himself, who, on this account, was called a friendless man, because, by law, he could have no friend. In the Saxon he was called *wulfesheofod*. (wolf's head),—because any one might kill him with impunity.(4) But this was not the law in Bracton's time, or at least not generally so; for it appears, from this writer, that an outlaw might not be killed, unless he made resistance or refused to surrender. An outlaw, at that period, likewise forfeited every thing, whether in right or in possession; but the law was rather relaxed in its rigor towards such persons in this reign, for debts on simple contract were not forfeited.(5)

LVI.—*Pleas of autrefois Acquit, and autrefois Attaint.*

It was now become a maxim in criminal proceedings, that a man should not be tried twice for the same offence, wherefore, *autrefois acquit*—(formerly acquitted)—of the same felony was held to be a good plea to prevent going to trial, provided the defendant could produce the record of the acquittal. Sometimes the plea was *autrefois attain* or *autrefois convict*—(formerly attained or convicted)—for there was not as yet any distinction between them,—which, after a time, was held to be a good plea to an indictment or an appeal.(6)

(1) Bract. 143. Reeve's Hist. ii. 51.

(3) Bract. 125.

(2) Stat. Westm. 2. 13 Ed. 1. c. 13.

(4) Lib. Constit. Ethelred.

(5) Apud. Wilk. 110. 116. Co. 3 Inst. 128. Bract. 127. Reeve's Hist. ii. 20.

(6) 26 Ass. 15. 44 Ed. 3. 44.

LVII.—Privileges of Married Women.

A married woman was, according to the old law, considered as *in potestate viri*—(under the control of her husband),—and so privileged in cases of felony. A woman might also plead her pregnancy to respite her execution, but this was not allowed a second time.(1)

The sources of legal information in this reign are the statutes, parliament-rolls, year-books, and some law-tracts.

The statutes of this reign are called *nova statuta*—(new statutes)—to distinguish them from the *statuta vetera*—(old statutes).—The parliament-rolls contain an ample and satisfactory account of the judicial proceedings of the Peers, and of the petitions of the Commons, many of which gave rise to the statutes, either at this or a subsequent period, as also of the ordinances which were thus distinguished from the statutes. Of these parliament-rolls, MS. copies are said to be extant in many libraries, besides which they have since been printed by authority of parliament.(2)

SECTION VII.—STATUTE LAW UNDER RICHARD II., A.D. 1377, 1399.
HENRY IV., A. D. 1399, 1413.

I. Navy. II. Impressing Seamen. III. Shipping and Commerce. IV. Exporting Gold and Silver from England. V. Going Abroad. VI. Statute against Appropriations. VII. Against Mortmains. VIII. Treason. IX. Fresh Arraignments for the same Offence. X. Standing Mute. XI. Peine Forte et Dure.

I.—Navy.

The regulation of the navy was one of the first subjects which engaged the attention of Richard II. From a statute passed in the second year of his reign, we find that the principle of impressing men by the king's commission was recognised as the law of the land.(3)

II.—Impressing Seamen.

If those who were arrested and retained for the king's service fled, they were, besides forfeiting double what they had taken for wages, to be imprisoned for a year.

III.—Shipping and Commerce.

For the encouragement of English Shipping and increase of the navy, which, as the preamble to another statute complains, was then greatly diminished, it was

(1) Reeve's Hist. iii. 126.

(3) Stat. 2 Ric. ii. c. 4.

(2) Ibid, 147.

178 STATUTE LAW UNDER RICHARD II. AND HENRY IV.

ordained that the king's subjects should ship no merchandise out of or into the realm, but only in ships of the king's liegeance, on pain of forfeiture. This was confirmed and enlarged by several additional regulations in two subsequent statutes.(1)

IV.—Exporting Gold and Silver.

Carrying gold and silver out of the kingdom was forbidden, under the penalty of forfeiting all that the offenders could forfeit. This was a measure of general policy, grounded on the king's prerogative, and confirmatory of previous statutes; but it was particularly levelled against the clergy, to prevent sending money out of the kingdom.(2)

V.—Going Abroad.

All persons were likewise restrained by the same act from going beyond sea without the king's licence, and then it was to be only at certain ports.

VI.—Statute against Appropriations.

The practice of appropriation on the part of the patrons of churches, that is, of taking the profits of livings into their own hands, and deputing a person upon a scanty salary to perform the duties of the church, was now grown to such a height as to be highly injurious to the interests of religion; for the miserable subsistence of persons so appointed, who were known under the different names of curate, vicar, and capellan, brought both the person and office of the clergy into contempt: wherefore it was enacted that, in every licence to be made in Chancery for the appropriation of a church, it should be expressly contained therein, that the diocesan of the place, upon the appropriation of such church, should, among other things, require that the vicar should be well and sufficiently endowed.(3)

VII.—Against Mortmains.

As the ecclesiastics were anxious to evade the mortmain act, and had hit upon the device of consecrating land for burying ground, and under that pretence of purchasing considerable property in mortmain, it was enacted by a statute in the 15th of this king, that such advice was to be brought within the words of the act, *arte et ingenio*—(by art and subtlety),—as also the purchase of lands to the use of those religious houses.(4)

VIII.—Treason.

The statute of treason in the preceding reign being complained of, as incurring divers pains, insomuch that no one knew how he ought to behave himself, to do, speak, or say, for doubt of such pains; it was the first act of this king's reign,(5) to repeal the abovementioned statute, and revive the statute of Ed. III.; but, as

(1) Stat. 5 Ric. 2. st. 1. c. 3; Stat. 6 Ric. 2 st. 1. c. 8. 14 Ric. 2. c. 6.

(2) Stat. 5 Ric. 2. st. 1. c. 2.

(3) 15 Ric. 2. c. 6.

(4) Stat. 15 Ric. 2. c. 5.

(5) Stat. 1 Hen. 4. c. 1.

the principle object of that statute of Richard II. was the suppression of riots, it was found necessary to provide a remedy for these evils; wherefore it was enacted, that when any riot, assembly, or rout of people, against law, was made, the justices of the peace, or two of them, with the sheriff and undersheriff, were to come with the power of the county, the *posse comitatus*, and to arrest them, and then record what they found done in their presence against the law, by which record the parties were to stand convicted, as in the manner provided by the statute of forcible entries.(1)

IX.—*Fresh arraignments for the same Offence.*

A person once acquitted, was not to be arraigned again for the same offence, unless the first arraignment was either without an original or with a bad one, when he might be arraigned afresh at the suit of the king. But if the original was good, he could not be arraigned again though the mesne process was bad.(2)

X.—*Standing Mute.*

If a person, charged with felony, stood mute, it had now become the regular practice to empanel a jury, *ex officio*, to try whether he stood mute of malice, or from infirmity. This precaution was become the more needful, as the punishment inflicted on the offence of standing mute had increased in severity.(3)

XI.—*Peine Forte et Dure.*

The punishment was now called *peine* instead of *prison*. The parties on whom it was inflicted were to lie in a dungeon, nearly naked, with heavy weights on their breast until they were dead, which appear to have been all additional circumstances of severity since the reign of Edward I.(4)

SECTION VIII.—STATUTE LAW UNDER HENRY V., A. D. 1413–1422.

HENRY VI., A.D. 1422–1452. EDWARD IV. A.D. 1461–1483.

HENRY V.—I. *Coinage.* II. *Flying Process.*

HENRY VI.—I. *Parliament and Elections.* II. *Qualifications of Electors.* III. *Qualifications of the Knights of the Shire.* IV. *Embezzling Records.* V. *Criminal Processes—False Indictments.*

EDWARD IV.—I. *Tenures, Knights' Service, and Soccage.* II. *Burgage Tenure.* III. *Rents.* IV. *Fee Simple.* V. *Estates of Freehold.* VI. *Conditional Estates.* VII. *Mortgage.* VIII. *Parceners.* IX. *Partitions.* X. *Joint Tenants.* XI. *Tenants in Common.* XII. *Modes of Conveyance, Gift, Feoffment, Grant.* XIII. *Livery and Seisin.* XIV. *Lease.* XV. *Release.* XVI. *Lease and Release.* XVII. *Exchange.* XVIII. *Different kinds of Possession.* XIX. *Personal Property.* XX. *Criminal Law—Treason.* XXI. *Voluntas Reputabitur profaclo.* XXII. *Year Books.*

(1) Stat. 13 Hen. 4. c. 7.

(3) 8 Hen. 4. 1.

(2) 9 Hen. 4. 2.

(4) See Crabb's His. Eng. Law, c. 22.

HENRY V.—I.—*Coinage.*

On the subject of the coinage, the statutes of former reigns against the introduction of foreign money were enforced and enlarged. Galley halfpence, and the money called Suskines and Doitkines, and all manner of Scottish silver, were to be put out and not to be current in future, for any payment in the realm of England.(1)

As some doubt had been entertained, whether clipping, filing, and washing the money of the land, ought to be judged treason or not, as no mention is made of it in the statute of Treason 25 Ed. III., this doubt was now removed by bringing it under the crime of treason.(2)

II.—*Flying Process.*

In cases of murder, manslaughter, insurrection, and the assembling of people in great numbers, if the offender fled, and any one complained thereof to the chancellor, a writ of *capias*, and afterwards of proclamation, was to be issued, and the party in default to be attainted.(3)

HENRY VI.—I.—*Parliament and Elections.*

The most important act of this reign was that which defined the qualifications of those to be elected as members of parliament, and those who were to elect, the provisions of which remain for the most part in force to the present day. Endeavors had hitherto been made to secure freedom of election, and to enable all to give their votes who had a right so to do, the consequence of which was, that numbers had come together for that purpose who had no right whatever. The preamble to the statute complains, that "elections of knights of shires have now of late been made by very great outrageous and excessive numbers of people, dwelling within the same counties of which the most part was people of small substance and of no value, whereof every of them pretended a voice equivalent, as to such elections to be made, with the most worthy knights and esquires dwelling within the same counties, whereby manslaughter, riots, batteries, and divisions among the gentlemen and other people shall very likely arise, unless due remedy was provided."(4)

II.—*Qualifications of Electors.*

The statute therefore directs, that the knights of the shire should be chosen by the people dwelling and resident in the county, having free land or tenement to the value of 40s. by the year, at least, above all charges. The sheriff had authority

(1) Stat. 3 Hen. 5. st. 1. c. 1.

(2) Stat. 2 Hen. 5 st. 1 c. 6.

(3) Stat. 9 Hen. 5. c. 9.

(4) Stat. 8 Hen. 6. c. 7.

given him to examine, upon the Evangelists, every such chooser, how much he expended by the year; and if he returned any one contrary to this act, and was attainted thereof, he was to forfeit £100, and to be imprisoned for a year without bail or mainprise; moreover the knights were to lose their wages. The freehold was, by subsequent statute, required to be in the county where the elector resided,(1)

III.—Qualifications of the Knights of the Shire.

The persons chosen were, in affirmance of preceding statutes, to be dwelling and resident in the county; and, in a subsequent statute, it is added, that the knights of shires should be notable knights of the county for which they were chosen, or otherwise such notable esquires or gentlemen of the same county, *gentils hommes del nativité*—(gentlemen by birth),—as were able to become knights and no man of the degree of *vaillets*, that is, yeomen, or under.(2)

IV.—Embezzling Records.

Embezzling Records, which was before punishable only with imprisonment, was now made felony. Also, those who aided in this offence were made felons.

V.—Criminal Process—False Indictments.

Several provisions were made in this reign for the purpose of regulating criminal prosecutions, so as to prevent all oppressions.(3) From the preamble of an act in the 6th year of this king, we find that it was common for persons to be indicted by suspect jurors, hired and procured to the same by confederacy and covin, upon which a *capias* used to be awarded to the sheriff of the county where the bench was, returnable within two or four days; when, if the party came not, an exigent would be awarded, and so the goods become forfeit. For the remedy of this evil, it was now enacted, that before any exigent was awarded, in such case a writ of *capias* should be directed to the sheriff of the county where they were so indicted; as also to the sheriff of the county whereof they were named in the indictment; this *capias* having six weeks, at least, before the return of the same. To prevent indictments and appeals from being preferred in foreign counties, by which defendants were taken by surprise, it was enacted, that a second *capias* should issue presently after the first. So likewise, when indictments taken before justices of the peace were, for the sake of evading this statute, removed by *certiorari* into the King's Bench, it was enacted that a second *capias* should be awarded with a similar process.(4)

(1) Stat. 10 Hen. 6. c. 2.
(3) Stat. 6 Hen. 6. c. 1.

(2) Stat. 23 Hen. 6. c. 15.
(4) Stat. 8 Hen. 6. c. 10. 10 Hen. 6.

EDWARD IV.—I.—*Tenures, Knights' Service, and Soccage.*

As the Common Law, particularly in regard to real property, was now fast approaching to the mould and form in which it exists at present, a general view of its state at this period will enable the reader to compare it with what it was before, and what it has been since.

Hitherto the doctrine of tenures had almost exclusively occupied the attention of the lawyer, but in proportion as the interest in landed property got transferred into a multitude of hands, and became diversified and modified, either by legal enactments or the changes of the times, new questions of law naturally came into discussion, and the decisions of courts varied accordingly.

The two principal tenures, knights' service and soccage, were now distinguished by the circumstance of whether the services were uncertain or certain. When the services to be rendered were uncertain, then the tenure was known to be knights' service, and was burdened with ward, marriage, relief, and the other incidents of that tenure; but when the services were certain, then it was evident that the lands were held by soccage tenure.(1)

II.—*Burgage Tenure.*

Tenure in burgage is incidentally mentioned by different writers, from the time of Glanville to the present period. We now find it described to be, where lands or tenements within a borough were held of the king or some other lord of the borough by certain rent. It was called burgage from burg, which Lord Coke supposes to come from the Sax. *borrhoe*, more properly *borh*, a pledge; a borough signifying the same as a company of ten families which were one another's pledge; but the more probable derivation is from the Ger. *burg*, Sax. *byrig*, a walled or fortified town connected with the Gr. *purgos*, a tower, because, originally, all important places were fortified and walled in. According to the feudal system, such towns were supposed to be held either mediately or immediately of the king; from whom they received many privileges, among others that of sending burgesses to parliament.(2)

III.—*Rents.*

There is another subject worthy of notice, namely, that of rents, which at this time was become a matter of some consideration. Reet, in Lat. *redditus*, a return, from *reddo*, to return, signified a return made by the tenant or lessee out of the profits of the land. We read of rent of different kinds in the ancient books, as *redditus assisus*, or *redditus assisæ*, rents of assize, so called because they were the rents of the freeholders and ancient copyholders, which were fixed by the assize and could not be varied. Those of the freeholders were called *redditus capitales*, chief rents, and both were named *quietis redditus*, quit rents, because tenants thereby went quit or free from all other services. These rents were like-

(1) Litt. sec. 118. 120.

(2) Litt. s. 162, 163, 164. Co. Inst. 109. Litt. s. 164.

(3) Co. 2 Inst. 19. Brit. fol. 164. Hargrav. Co. Litt. 145. 1. n. 5. Co. 2 Inst. 44.

wise distinguished by the names of *redditus albi*, white rents, or blanche farms, when they were paid in silver, and *redditus negri*, black mail, when the rent was paid in work, grain, or base metal. Another kind of rents were termed fee-farm rents, not on account of the mode of payment, but because of the perpetuity of the rent, which, according to Britton, was the true value of the land more or less, and was, for the most part, one-fourth of the value, although it is supposed that not the quantum of the rent, but the perpetuity, was essential to create a fee farm. This was a species of soccage tenure, and was originally called *firma blanca*, or blanche farme.(1)

IV.—Fee Simple.

A fee was divided into a fee simple and fee tail. A fee simple was equivalent in signification to an absolute inheritance, or an estate of inheritance in the most extended sense of the word. A fee tail was only a limited inheritance, or an inheritance which was limited to certain heirs, from the word *talliare*, to cut, as before observed.(2)

V.—Estates of Freehold.

Other estates were not estates of inheritance, but of freehold only, as that of tenant in tail after possibility of issue extinct, tenant by curtesy, tenant by dower, and tenant for term of life.

VI.—Conditional Estates.

There was another kind of estates described under the name of estates upon condition, to which conditions were annexed; arising from some pecuniary consideration.(3)

VII.—Mortgages.

One of the principal estates of this kind, which has continued to the present period, is that of the *mortuum vadium*, in Fr. *mort-gage*, i.e. dead pledge, which was so called because it was doubtful whether the feoffor or mortgagor would pay the sum at the time limited, and if he did not, then the land which was put in pledge was dead to him, and if he did pay, then it was dead to the feoffee or the mortgagee. In the time of Glanville, this species of security was not much favoured in law, but it appears to have been more so in the time of Richard II., for Sir Matthew Hale observes, that in the 14th year of this king the parliament would not admit of redemption. As this would, however, contrary to the spirit of the times, have encouraged alienation by means of mortgages, it appears that courts of equity soon after admitted, that although a mortgage was forfeited, by the non-fulfilment of the condition, yet if the estate were of greater value than the sum lent thereon, the mortgagor might at any reasonable time, redeem his estate by

(4) Litt. s. 1. Litt. s. 13.

(5) Litt. s. 325.

paying the mortgage, principal, interest, and expenses; which proceeding was afterwards denominated Equity of Redemption (1)

Besides the above estates, which were considered sole, there were also others that might be enjoyed by more than one person, the law of which is fully defined at this time. The owners of joint estates were either parceners, joint-tenants, or tenants in common.

VIII.—*Parceners.*

Parceners were either parceners by the common law, or parceners by the custom. When daughters took an estate in fee or in tail, they were parceners by the common law, and were considered as one heir in conformity with the principle laid down by Bracton, "*Jus descendit quasi uni heredi propter juris unitatem*"—The right descendeth as to a single heir, because of the unity of the right.(2)

Where lands, as by the custom of gavelkynd, descended to all the sons equally and in parcenary, they were called parceners by custom; for in this case the sons were parceners in respect of the custom of the fee or inheritance, and not in respect of their persons as the daughters.(3)

IX.—*Partitions.*

When a partition was desired by any of the parties, it was either made by agreement, or where that could not be effected, then they might have a writ called a *breve de partione faciendâ*—(a writ of partition),—which is mentioned by Bracton, whereby the unwilling parties might be compelled to make partition.(4)

There was another sort of partition which arose from gifts in frank-marriage, as if a man was seised in fee and had two daughters, and on the marriage of the eldest he gave lands in frank-marriage, and afterwards died seised of other lands of greater value, it was a rule in that case, that neither the husband nor the wife should have any property in such remnant of the estate, unless they would put the lands held in frank-marriage into what was now termed hotch-pot, from hodge-podge a pudding, *farrago* or mixture, which is alluded to by Bracton and subsequent writers.(5)

Where of three parceners one wished to make partition, and two to hold in parcenary, then one part might be allotted in severalty to the one who wished it; but this could only be where the partition was by agreement, for if made by force of a writ, each was to have her part in severalty.(6)

X.—*Joint-Tenants.*

Where lands were granted or leased to two persons to hold to them and their heirs, or for term of another man's life, by force of which feoffment or lease they were seised, they were joint tenants. They were so called because lands or tene-

(1) Lit. s. 322; Butler's Co. Lit. 20 a. n. 8.

(2) Lit. s. 241; Bract. fol. 66; Britt. c. 71; Flet. 1. 5. c. 9.

(3) Lit. s. 265.

(4) Bract. fol. 71; Lit. s. 243. et seq.

(5) Ibid, 266, et seq. Bract. fol. 77; Britt. c. 72; Flet. 1. 6. c. 47.

(6) Ibid, 276.

ments were conveyed to them jointly. They were *conjunctim feoffati*—(jointly enfeoffed),—or *qui conjunctim tenuerunt*—(who held jointly),—and were formerly called *participes et non heredes*—(partakers, not heirs).—Joint heirs were distinguished from parceners in many points, particularly in this, that they came in by purchase, that is, by the act of the parties, and that the surviving tenant in joint-tenancy, was to have the entire estate to himself, whatever it was.(1)

XI.—Tenants in Common.

Tenants in common were such as held lands or tenements in common, so as to take the profits in common. The principal difference between joint-tenants and tenants in common was, that joint-tenants had the land by one joint title and in one right, and tenants in common by several titles: thus, if one joint-tenant, or one parcener, aliened in fee to another man, the alienance held in common with the other joint-tenant or parcener, because they came in by different titles or feoffments. Neither joint-tenants nor tenants in common were at this time compellable to make partition, but the common law on this point was afterwards altered by statute.(2)

XII.—Modes of Conveyance, Gift, Feoffment, Grant.

A gift, *donatio*, was, as before observed, the original term for the principal conveyance, but we find from Bracton that the term *feoffamentum*, feoffment, had come into use in his time, and was applied to a gift of corporeal hereditaments, as lands and tenements, which distinction is expressly confirmed by Britton, a subsequent writer, who says, “done est nosme generall plus que n'est feoffment care done est generall a touts choses moebles et nient moebles, feoffment est rien, forsque del soyle”—(Gift is a word of more extensive meaning than feoffment; for a gift may be of any thing whether moveable or immoveable (i.e. personal or real,) whereas a feoffment is of lands only).—From Littleton we learn that the terms gift, feoffment, and grant were in common use in this time. A gift was not confined to a gift in tail; a feoffment, originally employed to signify *donatio feodi*—(the gift of a fee)—was now used to signify the gift in fee of corporeal hereditaments, and grant *concessio*, a term of later introduction served to denote a similar gift of incorporeal hereditaments, as advowsons, commons, and the like. He who made a gift was called the donor; he to whom the gift was made, the donee; he who made a feoffment was the feoffor, and he to whom it was made the feoffee; and, by the same rule, the grantor was distinguished from the grantee.(3)

XIII.—Livery of Seisin.

Between the gift, feoffment and grant, there was a further distinction as to the mode of performing the conveyance. The two former required the solemnity now

(1) Ibid, 277. Co. Inst. 180; Bract. fol. 28. 428; Brit. c. 35; Flet. 1. 3. c. 4; Lit. s. 280; Bract. fol. 430.

(2) Lit. s. 292; Ibid, 309; Ibid, 290, 318.

(3) Bract. fol. 53; Brit. c. 31; Lit. s. 57; Lit. s. 1; Lit. s. 57.

called livery of seisin, which by Bracton is particularly described under the name of *traditio seisinæ*. Livery of seisin was now, as in his time and also before, performed by some solemn act, as by delivery of the ring of a door or of a turf and the like, which Lord Coke calls livery in deed, when the feoffor and feoffee or their attornies, both holding the deed of feoffment, and the ring of the door, &c. the feoffor says, "Here I deliver you seisin and possession of this house in the name of all the lands and tenements contained in this deed, according to the form and effect of this deed." Livery might also be performed by words without any ceremony or act, as if the feoffor being at the house-door said, "Here I deliver you seisin and possession, &c. There was likewise what Lord Coke calls livery in law, when the feoffor said to the feoffee, being within view of the house or land, "I give you yonder land, &c. to you and your heirs." This appears to have been the same in Bracton's time, for he speaks of "*seisina per effectum et per aspectum*"—(constructive seisin by view).(1)

It is necessary to observe, that in all cases where a freehold should pass, whether by deed or without deed, it was needful to have livery of seisin, as in a lease for a term of life; but in a lease for a term of years it was not necessary, because in this latter case no freehold should pass.(2)

Besides, it was necessary in all feoffments and grants to have these words, "to have and to hold to him and his heirs," for these words "his heirs," made an estate of inheritance. For if a man purchased lands by these words "to have and to hold to him for ever," or by these words "to have and to hold to him and his assigns forever," in such case he would have only an estate for life.(3)

XIV.—Lease.

A lease, from the French *laisser*, and the German *lassen*, to let, or give leave, was a conveyance by which an estate for life, for years, or at will, was created. These estates were originally granted to husbandmen, who every year rendered some equivalent in provision or money, in the shape of rent, to their lessors or lords, and were for some time but little considered in law, as they amounted to little more than a leave or permission to hold the land at the will of the owner; and those who held them being for the most part in the condition of villeins, were regarded in no other light than servants or bailiffs of the lord, to whom they were expected to account for the profits at a stipulated rate. But, as it was soon felt that the cultivation of the land required the occupier to have a more permanent interest in the soil, these husbandmen gradually acquired a larger estate, and the length of leases was considerably increased.(4)

XV.—Release.

A release was an old mode of conveyance, as before mentioned; which, by Fleta, is termed *charta de quieta clamantia*—(a deed of quit-claim).—Releases were of two kinds, namely, a release of all the rights which a man has in lands

(1) Bract. fol. 41; Co. Inst. 48; Brit. c. 33; Flet. 1. 3. c. 35; Co. Inst. 48; Bract. 1, 2. c. 18.

(2) Litt. s. 59.

(3) Litt. s. 1.

(4) Bract. fol. 26.

and tenements, and releases in actions. A release, in the first sense, might enure or take effect in four different ways, viz., 1. By way of *miller l'estate*, that is, of passing an estate, as when one of two coparceners released all his right to the other; this was to enure to make an estate. 2. By way of *miller le droit*, that is of passing a right, as when a man released to a disseisor all his right, whereby the disseisor acquired a right, and his estate, which was before wrongful, was made lawful. 3. By way of extinguishment, as when a lord released to his tenant all the right he had in the seignory; this went to the extinguishment of the rent. 4. By way of enlargement, as where there was tenant for term of years or life, remainder to another in fee, and he in the remainder released all his right to the particular tenant and his heirs; this gave him an estate in fee simple. To make releases operate in this manner, it was necessary that the releasee should be in actual possession, so that there might be a privity of estate between the lessor and lessee, and that there should be words of inheritance in the deed.(1)

XVI.—*Lease and Release.*

From this last property of releases, these might be occasionally, and were at this period used as a means of transferring the freehold. When any one wished to enlarge the estate of another, a deed of lease for three or four years was made to the party intending to purchase, and soon after he had entered on possession, a release of the inheritance was given him by which he became seised of the fee simple the same as by feoffment with livery of seisin. This afterwards became an established mode of conveyance under the name of lease and release.(2)

XVII.—*Exchange.*

An exchange, like the preceding, was, as before shown, a very frequent mode of conveying estates, the properties of which are defined at this time. An exchange of tenements, without deed or without livery of seisin, was good, provided the estates which both parties had in the lands so exchanged were equal; that is, that if the one had a fee simple in the one land, the other should have a like estate in the other; but of things that lay in grant, it was necessary that it should be made by deed. The word *excambium*—(exchange)—was requisite, as it could not be supplied by any circumlocution. Besides, it was necessary that there should be an execution by entry or claim in the life of the parties.(3)

XVIII.—*Different kinds of Possession.*

Having taken a general view of the state of the law respecting the creation and conveyance of estates, we have next to consider the various manners in which possession to estates might be lost. For illustrating this point, recurrence may be had to the early writers, when cases of wrongful possession were most frequent, and the law respecting them was more thoroughly discussed. Bracton, in defining

(1) Litt. s. 445; Ibid, 305; Ibid, s. 304; Ibid, 479; Ibid, 465; Ibid, 459.

(2) 32 Hen. 6. 8; Reeve's His. iii. 365.

(3) Litt. s. 65; Co. Inst. 51.

the title to lands and tenements, discriminates nicely between the different degrees of *possessio*, *jus* and *proprietas*—(possession, right, and property).—According to him, there was a *nuda pedum positio*—(naked occupancy)—as in case of intrusion, where there was *minimum possessionis* and *nihil juris*—(but the least of possession, and nothing of right).—Another sort of possession was clandestine and precarious, inasmuch as it was gained by violence; this had *parum possessionis* and *nihil juris*—(little possession, and no right).—A third had *aliquid possessionis* and *nihil juris*—(something of possession, but no right)—such as that which belonged to a term of years, where only the usufruct was enjoyed. Sometimes there was *multum possessionis* and *nihil juris*—(strong possession, but no right)—as in an estate for life, by dower and the like. When a person had the freehold and the fee, he had *plus possessionis* and *multum juris*—(more possession, and much right).—When a person had the freehold, the fee, and the property, then he was said to have *plurimum possessionis* and *plurimum juris*—(complete possession and full right),—or the *droit droit*—(perfect right)—as it was otherwise called.(1)

When any one gained the possession without the *jus*, or title, this wrongful possession had acquired, even in the reign of Edward III., the name of ouster of freehold, or ousting a person of his freehold, of which there were different kinds, as disseisin, intrusion, abatement, and deforcement.(2)

XIX.—Personal Property.

The law respecting personal property began now to be more thought of, and more clearly defined. Bracton, like his predecessor Glanville, had adopted the doctrine and language of the civil law, which he calls the law of nations, that is, the universal law of nature and reason. These principles were in several points adopted and moulded into the scheme of English jurisprudence. In regard to game, the decisions of courts favoured the principles of the civil law more than that of the forest law; holding that animals *feræ naturæ*—(wild animals)—such as birds, beasts, fishes, belonged to no one except by the right of occupation. Even the keeping of deer in a park or warren did not give the owner a complete property in them, unless they could be distinguished by some mark as the colour and the like. Although the owner *ratione soli*—(by reason of property in the soil)—acquired such a property in deer or hares, that he might sustain an action of trespass for any injury done to them, yet still, as Mr. Reeves observes, he was not at liberty to call them *lepores suos*, or *damas suas*—('I have hares or his deer'),—but in general *mille lepores*, or *damas viginti*—(one thousand hares, twenty deer, &c.)—Nay more, a gift could not be made of a deer unless it was a white or tame deer in which a man could have a clear property.(3)

XX.—Criminal Law—Treason.

Owing to the manner in which this king came to the throne, during the life of Henry VI., a distinction was made between a king *de jure* and a king *de facto*—

(1) Bract. 159, 160.

(2) Mayn. 311; Year Books Ed. 3 and Hen. 6. *passim*.

(3) 8 Ed. 1. 14; Reeve's Hist. iii. 370; 3 Hen. 9. 55; 7 Hen. 6. 38, et seq.

(a king of right and a king in fact)—as affecting the law of treason and other matters. It was now laid down as a principle, that a treason against Henry VI., while he was king, in compassing his death, was punishable after Edward IV. came to the throne. It was also settled, that all judicial acts, done by Henry VI. while he was king, and also all pardons of felony and charters granted by him, were valid, and that a pardon given by Edward IV. before he was actually king, was void.(1)

XXI.—*Voluntas reputabitur pro facto.*

The old maxim of the criminal law that *voluntas reputabitur pro facto*—(the will shall be taken for the deed)—was now beginning to yield to a contrary opinion. Even as late as the reign of Henry IV. it was laid down as a rule, that if a man was indicted that *il gesoit depradando*—(he lay in wait in order to rob),—it was felony; but in the 9th of this king we find a contrary doctrine maintained. A man lay in wait in the road with his sword drawn, to set upon a person, and actually demanded the money of one whom he met, yet being interrupted at the moment, and not having taken the money, this was adjudged not to be felony. This principle was afterwards established and became a rule in law.(2)

XXII.—*Year Books.*

One of the principal sources of legal information at this period were the year-books, which being more copious than those of the preceding reigns, furnish an account of all the points of law which were then discussed in the courts. They contain an account of many particulars, which form a part of the English jurisprudence.(3)

SECTION IX.—STATUTE LAW UNDER RICHARD III., A. D. 1483–1485, AND HENRY VII., A. D. 1485–1509.

RICHARD III.—*I. Statutes of Richard III. II. Statute of Uses. III. Fines and Nonclaim. IV. Bailing of Offenders.*
 HENRY VII.—*I. Ejectment.*

I.—Statutes of Richard III.

The short reign of the unfortunate Edward V. afforded no opportunity for calling a parliament, although the business of the courts went on without interruption, in the midst of the revolutions which succeeded each other so rapidly. The reign of Richard III., though short, was not altogether barren of materials for the legal historian. Richard called a parliament in the first year of his reign, in which several acts were passed.

(1) Reeve's *His.* iii. 409; 19 Ed. 3. 1.

(2) 13 Hen. 4. 8.; 9 Ed. 4. 28.

(3) See Crabb's *His. Eng. Law*, ch. 27.

190 STATUTE LAW UNDER RICHARD III. AND HENRY VII.

The principal subjects of these statutes were uses, fines, and bailing offenders, on which some wise provisions were made by this king, who seemed to wish to atone for his atrocious usurpation by the wisdom of his government.(1)

II.—Statute of Uses.

His first act was passed with the view of obviating some of the numerous inconveniences which were then found to attend the conveying of land to a use. By the common law, *cestui que use* had no power to aliene the land, or to do any act to charge the freehold without the concurrence of the feoffee, which often created much embarrassment and confusion in the conveying of lands, wherefore power was given by the statute to the *cestui que use* to dispose of the estate in the same manner as the feoffee to the use might do at common law.(2)

III.—Fines and Nonclaim.

The evils which the statute of Nonclaim in the reign of Ed. III. had occasioned, by diminishing the validity of fines, had doubtless long been felt; but it was left to the usurper Richard III. to remedy these evils by restoring the old law. Every fine, after engrossing, was to be openly and solemnly read and proclaimed in court, the same term and three next terms, during which ceremony all pleas should cease. A transcript was then to be sent from the justices of the assize where the lands lay, who were, in like manner, to cause it to be proclaimed in every one of their sessions; and the justices of the peace the same in their sessions; which proclamations were to be certified the second return of the following term. After this, a fine was to exclude all parties, as well privies as strangers, except *femmes covert*—(married women)—not consenting hereto, persons within age, in prison, out of the realm, or not of whole memory, all others having a title at the time the fine was levied were to put in their claim within five years after the proclamation and certificate.(3)

IV.—Bailing Offenders.

Notwithstanding the provisions in Magna Charta and stat. West. 1, for securing the personal liberty of the subject, and preventing unlawful imprisonments, persons were nevertheless subject to be daily arrested and imprisoned for felony, either on no ground at all or on very slight suspicions, and were kept without bail and mainprise; wherefore, the power of bailing offenders was given to the justices of the peace, who were to inquire at their sessions of the escapes of all persons arrested and imprisoned. Sheriffs, and other officers, were likewise prohibited from seizing the goods of those who were arrested or imprisoned for felonies, before conviction or attainder, upon pain of forfeiting to the person aggrieved double the value of the things so taken.

HENRY VII.—I.—Ejectionment.

The decisions of the courts in this reign in regard to the effect of the writ of *ejectione firmæ*, or the action of ejectionment, lead to an important change in real

(1) See Crabb's Hist. Eng. Law, ch. 28.

(2) 1 Ric. 3.

(3) Stat. 1. Ric. 3. 7.

remedies. In the reign of Edward III., it was held that an *ejectione firmæ* was an action of trespass, in which the plaintiff could only recover damages for the trespass; and that, for the recovery of his term, he must bring a writ of covenant. In the reign of Edward IV., it appears that the courts inclined to the opinion, that in *ejectione firmæ* the plaintiff might recover what remained unexpired of his term, and also damages for the time it was held from him. This opinion was now confirmed by the solemn decision of the court, in the 14th year of this king, when the recovery of the term, as well as damages, was adjudged to the plaintiff in an action of ejectment. This decision gave to the writ of *ejectione firmæ* new power, by which it might be employed as means of trying titles to land, and paved the way for its being made the substitute of real actions, as writs of assize, of novel disseisin, writs of entry and writs of right, which gradually went out of use.(1)

(1) 7 Ed. 4. 6; 14 Hen. 7. 341. See Crabb's His. Eng. Law, c. 28.

CHAPTER XXII.

STATUTE LAW FROM THE REIGN OF HENRY VIII. TO
THE 14TH YEAR OF GEORGE III., A.D. 1774,

WHEN THE POWER OF MAKING LAWS WAS GRANTED TO CANADA.

SECTION I.—STATUTE LAW UNDER HENRY VIII., A.D. 1509–1547.

I. Religion. II Ecclesiastical Polity. III. Election of Bishops. IV. Style assumed by the King. V. Dissolution of Monasteries. VI. Lawful Marriage Defined. VII. Statute of Uses. VIII. Jointures. IX. Devises. X. Leases. XI. Partition. XII. Descent tolling entry. XIII. Gifts to superstitious uses. XIV. Admiralty. XV. Limitations of Actions. XVI. Restitution of Goods in Indictments. XVII. Penal Laws. XVIII. Malicious Mischief. XIX. Statute of Uses. XX. Lease and Release. XXI. Personal Actions Assumpsit. XXII. Statutes. XXIII. Reports.

I. Religion.

The changes which the law underwent in this reign were numerous and remarkable, particularly those which concerned the national religion.(1)

II. Ecclesiastical Polity.

The laws regarding ecclesiastical polity were all directed towards reducing the power of the clergy and severing their connexion with the see of Rome, which had been in vain endeavoured by this king's predecessors, but was now fully effected by a series of parliamentary provisions. The first acts in order of time were passed in the 21st year of this king against the unreasonable exaction of fees for the probate of wills, for the regulation of indulgences, and the restriction of pluralities.

III.—Election of Bishops.

The election of bishops was put upon such a footing that all pretence for an application to the see of Rome for its concurrence was done away. All bishops were to be presented to an archbishop, and an archbishop to the other archbishop, or to any four bishops whom the king should name. When any see was vacant, the king was to grant a license or *cong   d'elire* to the dean and chapter, and there-

(1) Crabb's Hist. Eng. Law, ch. 29.

with to send a letter missive, containing the name of the person whom they were to elect, and if they delayed the election for twelve days, then the king was to nominate by letters patent. We have seen that in the reign of Henry I. the right of investiture was given up, and in consequence a freedom of election was granted to all prelates, both bishops and abbots. This was confirmed by King John, and afterwards by statute in the reign of Edward III. By the abovementioned statute of this king the bishops were prohibited from applying to the see of Rome for its concurrence on pain of a *præmunire*.(1)

IV.—*Style assumed by the King.*

In order to convince the see of Rome and all the world that the king was in earnest in throwing off the allegiance to the pope in ecclesiastical matters, he assumed the title of supreme head of the church, and had it confirmed by act of parliament, by which his style and title were settled in the following words: "Henry VIII. by the grace of God, king of England, France, and Ireland, Defender of the Faith and of the Church of England and also of Ireland, in earth the supreme head." It was also declared high treason to deprive him of it.(2)

This last measure is the more entitled to notice as it was altogether a novelty for the kings to submit the question of their style and title to parliament, which being heretofore looked upon as personal matter, had been assumed by themselves at their own discretion.

V.—*Dissolution of Monasteries.*

The most material change in the ecclesiastical polity, and the most violent inroad on the property of the church, was made in the 27th and 31st year of this king, when all the monasteries in England were dissolved, and the king became possessed of all the revenues of these houses. These he parcelled out, mostly among his courtiers and favourites, and thus, contrary to the intentions of the original donors, and to the statute of Richard II., increased the number of lay appropriations.

The primitive institution of suffragan bishops was provided for, and regulated by, a statute in the 26th year of this king, which empowered every bishop to appoint two honest and discreet spiritual persons within his diocese, of whom the king would appoint one to be a suffragan. The towns to which suffragans were appointed, together with their duties and privileges, were specified in this act. In his 33d year he erected, out of the ruins of the dissolved monasteries, several new bishoprics, that is to say, Gloucester, Bristol, Peterborough, and Oxford, which were annexed to the province of Canterbury, and that of Chester, and Sodor and Man, were annexed to the archbishopric of York.

As Henry had gone thus far in throwing off all political connexion with the see of Rome, it is not surprising to find that notwithstanding his professions of attach-

(1) Stat. 25 Ed. 3.

(2) Stat. 35 Hen. 8, c. 3; Crabb's Hist. Eng. Law, c. 29.

ment to the doctrines and discipline of the Roman church, he should feel disposed to introduce some changes in the forms of the national religion. Accordingly, we find, that an act was passed in the 34th year of his reign, empowering the king to appoint a commission of bishops and clergy to agree in a form of religion. But having set his subjects an example of thinking for themselves, and holding lightly what had been established, he endeavoured in vain, by several penal statutes in the 31st, 34th, and 35th years of his reign against diversities of opinion, to fix them at the point he pleased.

VI.—Lawful Marriages defined.

Several statutes were made on the subject of marriage, in order to suit the convenience of this capricious king; but the only one entitled to notice was that passed in his 32d year, by which all marriages contracted by lawful persons, that is, persons not prohibited by God's law to marry, and duly solemnized, were to be held valid. The preamble to this statute states, as a reason for the act, that "what sparks remained of the papal legislation might kindle hereafter a great flame; and, at least, while they remained, might show that the pope's power was not entirely extinct."

VII.—Statute of Uses.

The statute of uses, in the preceding reigns, not having obviated the inconveniences which were complained of, as attending this secret mode of conveyance, a fresh attempt was made in this reign to remedy this evil. To this end, the famous statute of uses was passed in the 27th year of this king, which, after enumerating the evils resulting from such subtle-practised feoffments, fines, recoveries, abuses, and errors, proceeds to enact, that when persons shall stand seised of lands or other hereditaments, to the use, confidence, or trust, of any other person, or body politic, the person or corporation entitled to the use in fee simple, fee tail, for life or years, or otherwise; shall from thenceforth stand and be seised, and be deemed in lawful seisin of the land, &c. in such like estate as they had in the use or trust; and the estate, title, right, and possession, shall henceforth be adjudged in them. Thus the statute executed the use as it has since been called, that is, transferred the use into possession; by which means the *cestui que use* become completely possessed of the land in law as he was before in equity. This is the substance of that statute, which in pleadings and deeds has since been distinguished by the name of the statute for transferring uses into possession, or the statute for conveying the possession to the use.(1)

It was very soon felt that one consequence of this statute would be, to facilitate the conveyance to uses, particularly by means of bargain and sale, which had already become frequent. In order to give this sort of transfer the notoriety which was so much desired, another act was passed in the same year, which directed that no bargain and sale should enure to pass a freehold, unless it was made by

(1) Stat. of Uses, 27 Hen. 8, c. 10; Reeve's Hist. iv. 244.

indenture, and enrolled, within six months, in one of the courts at Westminster, or with the *custos rotulorum*—(keeper of the records)—of the county.(1)

It was, doubtless, thought, by thus destroying the intermediate estate of the feoffee, lands would no longer pass by limitation of use, but by formal livery of seisin; but, in order to guard against these secret transactions, which it was the object of the statute to put a stop to, it was thus ordained, that when they concerned any freehold interest, they should be by deed indented and enrolled.

VIII.—*Jointures.*

Another provision of the statute had regard to jointures, which, as before observed, sprung out of the practice of conveying to uses. When, in consequence of the statute of uses, *cestui que use* became absolutely seised of the land, and the wife would have become dowable, it was found necessary, in order to prevent the double claim of dower and jointure, to provide that in making such an estate in jointure, the wife would be for ever barred of her dower.

IX.—*Devises.*

An important consequence of the statute of uses was, that *cestui que use* had no longer the power to devise the land as at common law; no lands or tenements were devisable, except by the particular custom of some boroughs. This king, however, being more favourable than his predecessors to the removal of those restrictions which impeded the transfer of landed property, a statute was passed in the 32d year, which was revised and amended in his 34th and 35th years, enabling persons who held lands and tenements in soccage to devise the whole, with a saving of the king's primer seisin.(2)

X.—*Leases.*

It appears that the remedy which the statute of Gloucester gave the lessee for years to recover against the lessor, when he suffered himself to be impleaded in a real action by collusion, did not extend to several cases in which the interests of termors were affected; for, if the lease were without writing, or a recovery was suffered by default, the termor could not recover his term. It was also supposed that tenants by statute merchant, statute staple, or *elegit*, could not have their remedy by this statute. In order to meet all these cases, a statute, in the 21st year of this king, directed, that all lessees should maintain their leases against the recoverors, and that no statute merchant, statute staple, nor execution by *elegit*, should be made void by any feigned recovery.(3) By another statute, in the 32d year of this king, a further provision was made to protect lessees against tenants in tail, so that, if any person seised in fee or in tail, in his own right, or in the right of his church, or his wife, or jointly with his wife, made a lease by indenture for years or life, it was ordained that it should be good and lawful, the same as if the lessor was seised in fee simple, provided it were not made to any lessee having an old lease unexpired, or not surrendered, and also not made in reversion. This

(1) Stat. 27 Hen 8. c. 16.

(2) Stat. 32, 34; 35 Hen. 8.

(3) Stat. Glouc. Co. 2 Inst. 321.

was afterwards called the enabling statute, to distinguish it from the restraining statutes in Queen Elizabeth's time.(1)

XI.—Partition.

As inconveniences frequently arose in cases of joint-tenancy, where the parties were not willing to make partition, it was thought advisable, in the 21st year of this king, to compel joint-tenants, and tenants in common, to make partition, by the writ *de partitione faciendâ*, in the same manner as coparceners were compellable at common law. This act, which was confined to estates of inheritance, was afterwards extended, in the 32d year of this king, to estates for life or years.(2)

XII.—Descent tolling entry.

The statute of mortmain was now, agreeably to the temper of the times, extended against gifts to superstitious uses.

XIII.—Gifts to superstitious uses.

A statute, in the 23d year of this king, made void all dispositions to the use of churches, chapels, &c., to the intent to have obits perpetual, or service of a priest for ever.(3)

XIV.—Admiralty.

A material alteration was made in the criminal judicature of the court of Admiralty, by two statutes, in the 27th and 28th years of this king. By the first, all offences of piracy and robbery, &c. done on the sea, were to be tried in such places of the realm as shall be limited to the king's commissions, directed to the lord admiral, or his deputies. By the second it was enacted, that all offences committed upon the high sea, should be tried by commission of oyer and terminer, under the king's great seal, consisting of the admiral, or his deputy, and three or four more, among whom two common-law judges were to be of the number. Their proceedings were not to be according to the course of the civil law, by means of witnesses only; but according to the common law, by means of a jury.(4)

XV.—Limitations of Actions.

Some provisions were made by statute for limiting actions both in civil and criminal proceedings. A writ of right was now limited to the period of sixty years, within which it was necessary for it to be brought. Other writs, or actions possessory, were limited to fifty years. Actions upon penal statutes were to be brought by the king within three years, and by any common person within one. It is here worthy of observation, that in the time of Glanville and Bracton, when the administration of justice was more immediately in the hands of the kings, the

(1) Stat. 21 Hen. 8. c. 15.

(3) Stat. 23 Hen. 8. c. 10.

(2) Stat. 21 and 32 Hen. 8.

(4) Stat. 27, 28 Hen. 8; Co. 4 Inst.

limitations of actions were determined by circumstances, which necessarily made them indefinite and variable. By the stat. Westm. 1, the reign of Richard I. was made the time of limitation in a writ of right.(1)

XVI.—Restitution of Goods in Indictments.

By the common law, restitution of goods could be had only upon an appeal, but not upon indictment, because this was at the suit of the king. Wherefore a statute, in the 21st year of this king, gave the same advantage in indictment as in appeal, which was growing more and more out of favour. Accordingly, if a person was convicted of larceny, by the evidence of any one, the owner of the goods might recover his property, or the value of it, out of the offender's goods, by a writ of restitution, in the same manner as in cases of appeal.(2)

XVII.—Penal Laws.

The penal statutes of this reign were numerous and severe beyond all precedent; but, as they were for the most part repealed in the next reign, it will not be needful to enlarge upon any here but what were permanent.

XVIII.—Malicious Mischief.

It was likewise made felony to burn or destroy timber that was prepared for building; also the cutting the heads of ponds, and other species of malicious mischief.(3)

XIX.—Statute of Uses.

The statute of uses did not set every question on this subject at rest. The principal matter in dispute was the condition of the feoffees, as to what interest and power remained in them when, at the instant of their appointment, the statute transferred the possession from them to the *cestui que use*; the courts seeming still to adhere to the notions respecting feoffees, which prevailed after the statute of Richard III. If, as is supposed, it was the intention of that statute to revive the old mode of conveyance of feoffment and livery of seisin, the end was so far from being answered, that the contrary effect was produced; uses became a common mode of conveyance, and almost entirely superseded feoffments. Covenants to stand seised to uses, although discountenanced in former reigns, became frequent, and the decisions of the courts were in their favour.(4)

XX.—Lease and Release.

Another mode of conveyance, which acquired its force and operation from the statute of uses, was a lease and release. This method of conveyance was doubtless derived from the practice alluded to in the reign of Edward IV., of first granting a lease, and then a release, by way of enlarging the estate. It is said to have

(1) Stat. 32 Hen. c. 2; Stat. 7 Hen. 8, c. 3.

(2) Stat. 21 Hen. 8.

(3) Stat. 37 Hen. 8, c. 6.

(4) Reeves' Hist. iv. 323; 34 Hen. 8; Bro. Feoff. at Use, 16.

been regularly introduced by Serjeant Moore for the convenience of Lord Norris. The course of proceeding in this matter was as follows: A bargain and sale was made for a term, which, as it did not come within the statute of uses, did not require to be enrolled; and when the bargainee was in possession of the term, he was in a capacity to receive a release of the inheritance, the deed of release containing the whole settlement of the estate so conveyed.(1)

XXI.—*Personal Actions—Assumpsit.*

Personal actions were now more clearly understood, and more fully explained than formerly. We have seen, that in the reign of Edward III., actions on the case were grounded upon malfeasance. In the reign of Henry IV., an attempt was made to apply it to cases of nonperformance of a promise; but the courts were slow in allowing the name of trespass to be given to a thing that had never been done, and several actions of this kind were brought before they obtained a judicial decision in favour of the principle. In action against a carpenter, *quare cum assumpsisset*—(for that whereas he promised, &c.)—to build a house within a certain time, it was objected that this was in covenant, and, as no writing was shown, that the action must fail.(2)

XXII.—*Statutes.*

The statutes of this reign assumed the form which they have since retained, and are remarkable for their immoderate length. The statute of wills, in the 21st year of this king, is the first example of this kind which seems to have served as a model for drawing up statutes for the future. As parliament was now acquiring so great a share in legislation, the framers of these acts were proportionably anxious to include under the statutes every provision, so as to diminish the discretionary power of the executive government as much as possible.(3)

The same wordy style, and the same attempt at precision, was copied by the lawyers in their deeds of conveyance and other instruments, so that the language of the law became remarkable for the tediousness of its phraseology and the multiplicity of its repetitions.

XXIII.—*Reports.*

The practice of appointing stated reporters is supposed to have ceased in this reign, which may account for the scantiness of the year-book compared with that of former reigns.(4)

(1) Reeves' Hist. iv. 356.

(2) 2 Hen. 4. 3; Reeves' Hist. iii. 245.

(4) Crabb's Hist. Eng. Law, ch. 29.

(3) Reeves' Hist. iv. 412.

SECTION II.—STATUTE LAW UNDER EDWARD VI., A. D. 1547-1553.

I. Reformation. II. Sacrament. III. Abolition of Chantries. IV. Acts of Uniformity. V. Book of Common Prayer. VI. Nonconformists. VII. Marriage of the Clergy. VIII. Brawling in a Church or Church Yard. IX. Poor Laws. X. Tithes. XI. Loss of Dower for Treason and Felony.

I.—Reformation.

The reign of this prince, though short, is rendered memorable by the completion of the Reformation, for which the proceedings in the former reign had fully prepared the way.

To change the forms of religion, to which the people had been endeared by long habit, was not unattended with risk and inconvenience. When the minds of men became unhinged, they naturally did not know where to stop; and when taught to disregard the externals of religion, they would be apt to despise religion itself, or to form very fallacious notions on the subject. To try to obviate these inconveniences was one of the first acts of the legislature in this reign.

II.—Sacrament.

In the preamble to the first statute of Edward VI., concerning the sacrament, it is stated, that it is called in scripture a supper, the table of the Lord, the communion and partaking of the body and blood of Christ, but that many persons had condemned in their hearts the whole thing, on account of certain abuses heretofore committed in the misapplication of it. For this reason all persons were prohibited from depraving the sacrament by contemptuous words or otherwise, on pain of imprisonment and being fined at the king's pleasure. Likewise, by this statute, the communion of the sacrament in both kinds was to be ministered to the people within the church of England and Ireland, and the minister was not permitted to deny the same to any person.(1)

III.—Abolition of Chantries.

In order to complete the work of humbling the clergy, all charities, colleges, and free chapels, as also all lands given for the finding of a priest for ever, or for the maintenance of any anniversary, &c. were, by another act, given to the king.(2)

(1) Stat. 1 Ed. 6. c. 1.

(2) Stat. 1 Ed. 6. c. 14; Stat. 2 and 3, 3 and 4, 5 and 6, Ed. 6.

IV.—Acts of Uniformity.

In the next and following years, the legislature was engaged in introducing a uniformity of service, and a due administration of the sacraments.

V.—Book of Common Prayer.

As divers common prayers had of late crept into use, the Archbishop of Canterbury was now appointed to draw up, with the assistance of some other bishops, one convenient and meet order of prayer and administration of the sacraments, which, when performed, was entitled, "The Book of the Common Prayer and Administration of the Sacraments, and other Rights and Ceremonies of the Church, after the Use of the Church of England," which was directed to be used in all cathedrals and parish churches. In the 5th and 6th years of this king, this Book of Common Prayer underwent a revisal, to remove the doubts which had arisen about the service, "rather," as the act states, "by the curiosity of the ministers and mistakers, than for any other worthy cause."

VI.—Nonconformists.

In order to enforce the reformation, by putting a stop to the Roman forms of worship, several provisions were made, prohibiting what was called vain, untrue and superstitious services, such as antiphoners, missals, processions, and the like. All persons and bodies corporate were likewise enjoined to take out the images in churches, and deliver them to the bishop; and not to omit so doing on pain of forfeiting 20s. for every prohibited book or picture, for the first offence; £4 for the second; and for the third, imprisonment at the king's will. All persons were likewise commanded to attend their parish-church or chapel regularly, upon pain of censures of the church.(1)

VII.—Marriage of the Clergy.

The celibacy of the clergy had served as a powerful means of keeping that body true to the Roman church; wherefore it was thought necessary, at an early period, to abrogate all laws, canons, constitutions, and ordinances, which forbade marriage to ecclesiastical persons.(2)

VIII.—Brawling in a Church or Church Yard.

As the reverence for sacred places which had heretofore been protected by the common law, was now very much diminished by this revolution in religion, it was found necessary to enact, that quarrelling, chiding, or brawling, in a church or church-yard, should subject the offender, on conviction, if a layman, to suspension *ab ingressu ecclesiæ*—(from entering the church);—and, if a clerk, to be suspended from his ministerial functions, at the discretion of the ordinary. If any one smote, or laid violent hands on another, he was to be *ipso facto* excommunicated. For drawing a weapon, the offender was, on conviction, by verdict of

(1) Crabb's Hist. Eng. Law, ch. 30.

(2) Stat. 2 and 3 Ed. 6. c. 21.

twelve men, or by confession, or by two lawful witnesses, before the justices of assize, to lose his ears; and, if he had no ears, to be branded with the letter F in the cheek, to denote him a fray maker, or fighter; and moreover to be deemed excommunicate.(1)

IX.—Poor Laws.

One inconvenience attending the suppression of monasteries was, that the sources of charity being now for a time materially diminished, the number of vagrants was exceedingly increased, insomuch that the statute passed on this subject declares them to be more in number than in other regions. Wherefore, to remedy this evil, as it was hoped, by a measure of more than ordinary severity, it was now enacted, for the punishment of vagabonds and sturdy beggars, that any one, being apprehended, and convicted before two justices, upon proof of two witnesses, was to be branded with the letter V, and adjudged a slave to the person who brought and presented him.(2)

X.—Tithes.

The statutes in the former reign respecting the regular payment of tithes, were now confirmed and enlarged by several provisions, for the purpose of securing to the clergy their dues, and affording them a remedy in the spiritual courts against all acts of injustice in that matter.(3)

XI.—Loss of Dower for Treason or Felony.

By the common law, a woman lost her dower by the attainder of her husband for treason or felony; but by a statute in the first year of this king, this point of law was changed in favour of the woman; it was, however, repealed, so far as regarded the crime of treason, by a subsequent statute, and the common law restored, so as to take away the wife's dower, in case of treason by the husband.(4)

SECTION III.—STATUTE LAW UNDER PHILIP AND MARY, A.D.
1552–1558.

*I. Re-establishment of Popery. II. Poor Laws. III. Benefit of Clergy.
IV. Witnesses for the Prisoner.*

I.—Re-establishment of Popery.

The reign of Queen Mary was commenced with the repeal of all the laws concerning the Reformation that had been passed in the preceding reign. Likewise, with a view of restoring the national religion to its old form, a provision was

(1) Stat. 5 and 6 Dd. 6. c. 4; Co. 3 Inst. 17.

(2) Stat. 1 Ed. 6. c. 3.

(3) Stat. 27 and 32 Hen. 8; Stat. 2 and 3 Ed. 6. c. 13.

(4) Stat. 5 and 6 Ed. 6. c. 11.

made against such as disturbed a priest or preacher in the exercise of his ministerial functions, or committed any act derogatory to the national worship, inflicting three months imprisonment on the offender, and additional penalties if he did not repent. The former statutes against heretics were revived in the first and second year of Philip and Mary, and the papal authority was put on the same footing as it was before the 20th of Henry VIII., by a repeal of the law against licenses and dispensations, &c. But, lest this sweeping repeal of so many statutes, affecting church property, should bring the possessions of many into hazard, and introduce much contention, the parliament supplicated their majesties to intercede with Cardinal Pole, who was come over into England as legate *à latere* to reinstate the papal power, that all persons, and bodies corporate, as well as the crown, should enjoy all the possessions they were entitled to. Thus was the Roman religion once more re-established by law, precisely as it was before the 20th of Henry VIII.(1)

II.—*Poor Laws.*

The other acts of this reign were mostly in confirmation of former statutes. To the acts for the relief of the poor, a statute in the 2d and 3d of Philip and Mary added the provision, that if a parish was too small to support its own poor, licenses might be granted under seal to such of the poor as the justices of the county thought proper, to beg abroad; but as this was only a temporary measure, the management of the poor remained on the old footing until the next reign.(2)

III.—*Benefit of Clergy.*

Benefit of clergy was taken away from accessories before the fact in petty treason, robbing in a house or on the highway, and wilful burning of houses. This was in affirmance of a statute in the preceding reign, which took away benefit of clergy from the principals in the same offences.(3)

IV.—*Witnesses for the Prisoner.*

As to witnesses in favour of the party accused, we have no mention of any thing of the kind before this reign; for by the civil law, which was probably followed in this particular, neither counsel nor witnesses were allowed on behalf of any one accused of a capital crime. It has been cited to the honour of this queen, that when she appointed Sir Richard Morgan chief justice of the Common Pleas, she enjoined upon him, "That, notwithstanding the old error, which did not admit any witness to speak, or any other matter to be heard, in favour of the adversary, her majesty being party, her highness' pleasure was, that whatsoever could be brought in favour of the subject should be admitted to be heard; and, moreover, that the justices should not persuade themselves to sit in judgment otherwise for her highness than for her subject."(4)

(1) Stat. 1 Mar. st. 2. c. 3; Stat. 1 Mar. st. 2. c. 2; Stat. 1 and 2 Phil. and Mar. c. 6.

(2) Stat. 2 and 3 Phil. and Mar. c. 5.

(3) Stat. 4 and 5 Phil. and Mar. c. 4.

(4) 4 Comm. 359; Hollingsh. 1112; Stat. Trials, i. 55. See Crabb's His. Eng. Law, ch. 30.

SECTION IV.—STATUTE LAW UNDER ELIZABETH, A.D. 1568–1602.

I. Reformation. II. Common Prayer. III. Heresy defined. IV. The Thirty-nine Articles. V. Papal Power abolished. VI. Court of High Commission. VII. Congé d'Elire. VIII. Gifts to Charitable Uses. IX. Enrolment of Fines. X. Informers and compounding information. XI. Criminal Law. XII. Canonical Purgation abolished.

I.—Reformation.

This reign was commenced, like the two preceding, with enacting laws on the subject of religion, whereby the Reformation was re-established on the same footing as in the time of Edward VI.

II.—Common Prayer.

The statutes in the 2d and 3d of Edward VI. respecting the common prayer, which had been repealed in the 1st year of Mary, were now revived by Elizabeth, with additional provisions against ministers who omitted this form of prayer, and against all other persons who, in plays, songs, or other open words, spoke in derogation of it. Also the statute of Edward VI. against reviling the sacrament was revived, and further protection given to the ordinances then established. Those who absented themselves from their parish church or chapel on Sunday were subjected to a penalty of twenty pounds for every month.(1)

III.—Heresy defined.

As the prevailing notions with regard to heresy were now altered in consequence of the Reformation, it became necessary to determine by an express enactment, what should be comprehended under this offence. Accordingly we find, that all statutes against heretics, from the time of Richard II. to that of Philip and Mary, were repealed in the first year of this queen; and heresy was now defined to be that which had been so declared by the words of the canonical scriptures, and the interpretations of the first four general councils, or what might hereafter be so declared by parliament, with the assent of the clergy in convocation. Likewise, by this statute, the jurisdiction of heresy was left as it stood at common law, namely, to the infliction of censures in the ecclesiastical courts; and in case of burning a heretic, to the provincial senate only, unless, as Sir Matthew Hale supposes, that this power resided in the diocesan. In all cases it appears that the writ *de hæretico comburendo*—(for burning a heretic)—was not demandable at common right, but only grantable at the discretion of the king.(2)

(1) Stat. 1 El. c. 2.

(2) Stat. 1 El. c. 1; Hale, P. C. 405.

IV.—The Thirty-nine Articles.

As a further means of producing uniformity of doctrine as well as worship, thirty-nine articles, embracing the most important points of religion, were agreed upon at a convocation of the church of England in 1562, and ratified by the queen, to which all persons before ordination were obliged to subscribe, and if any minister impugned these articles, he was, on conviction before the bishop, to be deprived of his living.(1)

V.—Papal Power abolished.

Other statutes were expressly levelled against the see of Rome. One statute inflicted penalties on any one who maintained the papal authority; another was passed against purchasing papal bulls. Several statutes were passed against recusancy, saying mass, perverting protestants, and the like. In the last of these statutes, obstinate popish recusants, for so the Roman Catholics were now called, that is, those who within three months after conviction, refused to conform themselves to the obedience of the laws in coming to church, were to abjure the realm, and if any refused to abjure, they were adjudged to be felons without benefit of clergy.(2)

VI.—Court of High Commission.

The first act of this queen having revived the statutes 26 and 35 Henry VIII., which declared the king supreme head of the church, a clause was added to that statute for the purpose of restoring to the queen the jurisdiction in ecclesiastical matters which had heretofore belonged to the crown. By virtue of this act a court was erected, entitled "The Court of High Commission in Ecclesiastical Causes," which had authority to correct all errors, heresies, abuses, and enormities, and it was presumed, that this court had also authority to fine and imprison; but its jurisdiction was questioned in two points of view; first, as to what causes belonged to the high commissioners by force of the statute, and secondly, in what causes they might impose fine and imprisonment and what not.(3)

VII.—Congé d'Elire.

The stat. 25 Hen. VIII. respecting the election of bishops, which was repealed in the reign of Edward VI., was revived by a statute in this reign.(4)

VIII.—Gifts to Charitable Uses.

Another statute in behalf of the poor gave any private person the power of founding hospitals, alms-houses, and other charitable institutions, which heretofore could only be done by the king, or by his special license. By this statute all

(1) Stat. 13 El. c. 12.

(2) Stat. 5 El. c. 1; Stat. 13 El. c. 2; Stat. 23, 29, 31, 35 El.

(3) Co. 4 Inst. 324. See Crabb's Hist. Eng. Law, ch. 31.

(4) Stat. 1 El. c. 1.

persons seized of estates in fee were enabled, by deed enrolled in the Court of Chancery, to erect hospitals and the like, which should be incorporated by such name as the founders or their heirs appointed, and should have capacity to take lands, not exceeding in value £200 per annum, without license or writ of *ad quod damnum*, and notwithstanding any statute of Mortmain; but such corporations were disabled from making leases for longer than twenty-one years, and reserving the accustomed yearly rent, which was payable for the greater part of twenty years before.(1)

IX.—Enrolment of Fines.

The stat. 23 Eliz. enacted in affirmance of the stat. 5 Hen. IV., that writs of covenant and other writs on which a fine should be levied, together with the return thereof, the *dedimus potestatem*, and every other circumstance connected with the levying a fine, should be enrolled.(2)

X.—Informers and compounding information.

Owing to the number of penal statutes which now existed, and the encouragement which they held out to needy persons to bring informations for the sake of the forfeitures, two statutes were made in this reign, namely, in the 18th and 31st years of this queen, for the purpose of regulating this troublesome description of people, and in some instances inflicting corporal punishment on such persons, if convicted of malicious or oppressive proceedings. Among other things, compounding informations on penal actions, that is, taking any money or promise from the defendant, without leave of the court, by way of making a composition with him not to prosecute, subjected the offender to a penalty of £10, two hours standing in the pillory, and to be for ever disabled from suing such popular action. On the subject of these informations, it is worthy of remark, that no prosecution could be brought by any common informer after the expiration of a year from the commission of the offence.(3)

XI.—Criminal Law.

Among the additions to the criminal code, may be reckoned several new felonies; as wandering about under the garb of soldiers or mariners; carrying away heiresses, in confirmation of the statutes in the reigns of Henry VII. and Philip & Mary were made felony without benefit of clergy; also embezzling the king's stores; against moss-troopers, that is, those who carried away persons and imprisoned them, for the sake of getting a ransom, which was a frequent practice in the northern counties. Also the maliciously setting fire to stacks, privately stealing from a man's person, and even associating with gypsies, was felony, without benefit of clergy. Circulating false prophecies, for the sake of exciting sedition, subjected the offender, for the first offence, to imprisonment for a year, and forfeiture of goods; for the second offence, to imprisonment for life.(4)

(1) Stat. 39 El. c. 5.

(2) Stat. 23 El. c. 3.

(3) Stat. 18 El. c. 5; Stat. 31 El. c. 5.

(4) Stat. 39 El. c. 17; Stat. 39 El. c. 9; Stat. 31 El. c. 4; Stat. 43 El. c. 13; Stat. 8 El. c. 4; Stat. 5 El. c. 20; Ibid, c. 15.

XII.—Canonical Purgation abolished.

One change was made in the old law, by the abolition of canonical purgation. By a statute, in the 18th year of this queen, it was enacted, that instead of delivering persons entitled to the benefit of clergy to the ordinary, as had been accustomed, they should either be discharged or detained in prison, as the justices should think fit.(1)

Benefit of clergy was also taken away from cutpurses, and from those stealing out of a dwelling-house any thing above the value of 5s.(2)

SECTION IV.—STATUTE LAW UNDER JAMES I., A. D. 1602–1625.

*I. Leases by Ecclesiastical Persons. II. Privilege of Parliament. III. Abolition of Sanctuary and Abjuration. IV. Larceny in Women.**I.—Leases by Ecclesiastical Persons.*

In the statute of the last reign, limiting the leases granted by archbishops and bishops to 21 years, or three lives, an exception was made in favour of the crown; but this exception was done away by a statute in the first year of this king.(3)

II.Privileges of Parliament.

Doubts having existed, whether, if a person were taken in execution, and set at liberty by privilege of either house of parliament, a new writ of execution might issue against the party, a statute was passed, in the 2d year of this king, empowering the plaintiff to sue forth and execute a new writ after such time as the privilege of parliament had ceased.(4)

III.—Abolition of Sanctuary and Abjuration.

The old law of sanctuary and abjuration, after having been restricted by several statutes, was at length found to be fraught with so many inconveniences as to render its abolition expedient, which was accordingly effected by a statute in the 21st year of this king.

IV.—Larceny in Women.

By a statute in the 21st year of this king, it was enacted, that women, in cases of larceny, where men would have the benefit of clergy, should be branded with the letter T with a burning-hot iron upon the brawn of the thumb.(5)

(1) Stat. 18 El. c. 7.

(2) Stat. 8 and 39 El.

(3) Stat. 1. Jac. 1. c. 3. Crabb's Hist. Eng. Law, ch. 31.

(4) Stat. 2 Jac. 2. c. 13.

(5) Stat. 21 Jac. 1. c. 16.

SECTION V.—STATUTE LAW UNDER CHARLES I., A.D. 1625–1649,
AND CHARLES II., A.D. 1649–1685.

I. Convention of Parliament. II. Independence of the King. III. The King declared to be the Generalissimo of the Military and Naval Forces of the Country. IV. Parliament. V. Oath of Allegiance. VI. Abolition of Military Tenures. VII. Excise. VIII. Post Office. IX. Corporation and Test Acts. X. Habeas Corpus. XI. Writ de Hæretico Comburendo. XII. Navigation. XIII. Statute of Frauds. XIV. Parol Conveyances. XV. Nuncupative Wills. XVI. Statute of Distributions. XVII. Manner of voting supplies in this reign. XVIII. Right of imprisoning. XIX. Tenures. XX. Copy Holds. XXI. Title by purchase. XXII. Common Assurances. XXIII. Courts Martial. XXIV. New Trials.

I.—Convention of Parliament.

As the two houses of parliament met, before the Restoration, by an act of their own, which was justified by the necessity of the case, it was thought expedient in order to prevent this from being drawn into a precedent, to confirm all the proceedings of that parliament by an express act of the legislature.

II.—Independence of the King.

By another act, the independence of the king, and the inviolability of his person, was recognised.(1)

III.—The King declared to be the Generalissimo of the Military and Naval Forces of the Country.

By another, the king was declared generalissimo within the kingdom, and the ancient power of the crown, in regulating the military and naval forces of the country, was confirmed; and several provisions were made on the subject of the army by subsequent statutes. Among other things, the exportation of arms and ammunition out of the kingdom was prohibited under severe penalties; also, the billeting of soldiers in private houses, without the consent of the owners, was prohibited; and the quartering of soldiers was assigned to inn-keepers, stable-keepers, victuallers, and the like.(2)

IV.—Parliament.

It was now declared, that parliament consisted of king, lords, and commons, and subjected any person to a *præmunire* that published the doctrine, that both houses of parliament, or either house of parliament, had a legislative power with-

(1) Stat. 12 Car. 2. c. 20.

(2) Stat. 13 Car. 2. st. 1. c. 6; Stat. 14, 15, 31 Car. 2.

out the king. At the same time, in order to ensure a more regular meeting of parliament, another statute provided, that there should not be an intermission of more than three years after any sitting of parliament.(1)

V.—Oaths of Allegiance, &c.

To prevent the admission of improper persons into parliament, it was enacted, in affirmance of the stat. 7 Jac. 1, that all members, before they were permitted to sit and vote in the House of Commons, should take the oaths of allegiance, supremacy, and abjuration; besides subscribing and repeating the declaration against transubstantiation and the invocation of saints.(2)

VI.—Abolition of Military Tenures.

The abolition of military tenures, which was effected by statute, was one of the most acceptable measures that could have been adopted, as thereby many intolerable grievances and causes of discontent were removed.(3)

VII.—Excise.

The excise was a novel mode of taxing commodities, either immediately on their consumption, or more frequently on their retail sale. It is said to have been first devised in the reign of Charles I., and was given to the crown by act of parliament, as an equivalent for the profits of the feudal tenures, and although a very unpopular tax, it has been imposed on fresh commodities in every subsequent reign.(4)

VIII.—Post Office.

The post-office was another branch of revenue, which was now established by statute. It was first erected by King James I., and after having undergone successive improvements, and being very much extended in its plan, it was now put on a footing to increase the revenue, and to serve the public convenience.(5)

IX.—Corporation and Test Acts.

To prevent the recurrence of those political and religious dissensions which had lately convulsed the country, some acts were passed in this reign, in affirmance of some parliamentary enactments in former reigns. The most important of these were the statutes in the 13th and 25th years of this king, known by the name of the Corporation and Test Acts, which required every person, elected to an office in a corporation, as also all officers civil and military, to take the oaths of supremacy and allegiance, and also to receive the Lord's supper, according to the rites of the church of England.(6)

(1) Stat. 16 Car. 2. c. 1.

(2) Stat. 30 Car. 2 st. 2.

(3) Stat. 12 Car. 2. c. 24.

(4) 1 Comm. 218; Stat. 12 Car. 2. c. 23.

(5) Stat. 12 Car. 2. c. 35.

(6) Stat. 13 and 25 Car. 2.

X.—Habeas Corpus.

The *habeas corpus* act was in fact but a confirmation and extension of the common-law writ of *habeas corpus* to all cases of imprisonment on every charge except that of treason or felony; but it was drawn up in such a definite manner as to remove all the doubts that had existed in the former reign.(1)

XI.—Writ de Hæretico Comburendo.

The statute, abolishing the writ *de hæretico comburendo*, at the same time abolished all the processes and proceedings thereon, and all punishment by death in pursuance of ecclesiastical censures, with the saving claim, that the jurisdiction of the ecclesiastical courts, in cases of atheism, blasphemy, &c. was not to be otherwise abridged thereby.(2)

XII.—Navigation.

The most important act, for the support and advancement of the British navy, was passed in the reign of Richard II., Henry VII., and Henry VIII. This has acquired by distinction the name of the Navigation Act, from the number and importance of its provisions. Among other things it was enacted, that no goods should be imported into, or exported out of, any plantations or territories belonging to the king in Asia, Africa, or America, except in ships belonging to the people of England and Ireland, &c., whereof the master and three-fourths at least of the crew must be English. A statute in the subsequent year contains certain rules, articles, and orders, well calculated for maintaining order and discipline in the navy.(3)

XIII.—Statute of Frauds.

Among the statutes affecting private rights, that which was passed for the prevention of frauds has acquired the name of the Statute of Frauds, because its provisions have been held to be most efficacious in preventing fraudulent conveyances or contracts.(4)

XV.—Parol Conveyances.

By this it was enacted, that all parol conveyances, or those made by word of mouth only, without writing, should be void, as also all leases, assignments, grants, or surrenders of any interest in any freehold hereditaments, unless put in writing and signed by the party. For the same reason it was enacted, by another clause, that no parol or verbal promise should be sufficient to ground an action upon in case of an executor, &c. This provision was particularly directed ag inst the various fraudulent devices which had at different times been referred to in this sketch.

(1) Stat. 31 Car. 2. c. 2.

(2) Stat. 29 Car. 2. c. 2.

(3) 12 Car. 2. st. 1.

(4) 29 Car. 2. c. 3.

XV.—Nuncupative Wills.

Nuncupative wills, which, before the introduction of writing, had been very general, were now likewise prohibited, with an exception in favour of mariners at sea, or soldiers in actual service.

XVI.—Statute of Distributions.

The old law *de rationabile parte bonorum* was now confirmed, in regard to the goods of intestates, by a statute called the Statute of Distributions, which directed that, after the payment of all just debts of the intestate, the surplusage was to be distributed in the following manner. To the widow one-third, and to the children or their representatives an equal share; and if there were no children, then one-half to the wife, and the other half equally to the next of kin of the intestate; and if there were neither wife nor children, then the whole in equal shares to the next of kin.(1)

XVII.—Manner of voting Supplies in this Reign.

In the reign of Edward III., and long after, each house voted its own supplies, the votes of the Commons being always subject to the approbation of the Lords; but as their proceedings grew more regular, and the two houses acted more in concert, it became the practice for the Commons, probably because, from their habits of life, they were more familiar with pecuniary calculations, to determine the question of supplies first, and then submit their vote to the approbation of the Lords. In the reign of Elizabeth they began to set up the claim, that all money-bills should originate with them; and in the reign of Charles I. they resented it as a great indignity, when the Lords ventured to recommend them to vote a supply for the king, and (as we are informed by the historians of those times) the house, with one unanimous consent, declared this so high a breach of privilege, that they could not proceed upon any other matter, until they had first received satisfaction and reparation.(2)

XVIII.—Right of Imprisoning.

We have seen that, in the reign of Edward III., the king asserted it as his prerogative to punish offences done in parliament, in his own courts, and that as respects the peers, the point was then left undecided. The Commons were, however, for a long time, indisputably subject to this control. As late as the reign of Queen Mary, we read of a number of the Commons, who, having thought proper to withdraw from parliament, were indicted, by order of the queen, for a contempt. Six of them submitted themselves to the queen's mercy and were fined. The rest, among whom was the famous lawyer Plowden, traversed, but the death of the queen prevented any judgment. It appears, however, that previous to, and during this reign, the Commons were in the practice, either by force of the statute in the reign of Henry VIII., or by the particular command of the king, of fining

(1) Stat. 22, 23 and 29 Car. 2.

(2) Prynne's *speeches* to Cott. Abrid.; Clar. Hist. bk. ii.; Crabb's Hist. Eng. Law, ch. 33.

their own members. In the subsequent reign, they were in full possession of the power of taking cognizance of all offences committed by their own members in parliament, which gradually led to the extension of their privileges; so that, in this reign, both houses of parliament had acquired even a greater freedom in the exercise of this power than the crown itself.(1)

XIX.—Tenures.

In the statute of this king, which abolished military tenures, tenures in free or common soccage, and in frankmoigne, copyholds, and the honorary services of grand serjeanty, without the slavish part, as the statute observes, are expressly excepted. Soccage tenure consisted altogether of a certain service; this, of course, was now rendered in the shape of rent.

XX.—Copyholds.

Copyhold, the name by which the ancient tenure in villenage was now distinguished, had become divested of all its slavish incidents.

XXI.—Title by Purchase.

The distinction drawn by Littleton, between title by descent, and title by purchase, was now confirmed by Lord Coke, and subsequent writers. Purchase, *perquisitio*, was defined to be the "possession of lands and tenements which a man hath by his own act and agreement;" which, in fact, comprehended every acquisition of land, except by right of blood; "so that if," says Lord Coke, "I give land freely to another, he is, in the eye of the law, a purchaser."(2)

XXII.—Common Assurances.

As, by force of the statute in this reign, lands could no longer be transferred by a verbal contract only, deeds of conveyance were now become matters of still greater consideration, and acquired the name of assurances, or common assurances, because they served to assure a man's estate to him. The two principal kinds of assurances were those which were made, by matter of deed, in *pais*, or in the country, that is, with all the notoriety formerly usual, such as feoffments, gifts, grants, leases, bargain and sale, &c., and those by matter of record, as fines, recoveries, and the like. To the account of deeds and conveyances already given, something may now be added.(3)

XXIII.—Courts Martial.

The administration of military justice was, as before observed, committed to the constable and marshal, who presided as judges, assisted by some civilians, who tried and punished all offences, according to the laws and ordinances then in force. Sometimes military offences of great magnitude, or committed by persons of great

(1) Prynne's Pref. to Cott. Abrid.; Co. 4 Inst. 17; Strype's Memor. iii. 165; Parl. Hist. iii. 334; Commons' Journal, Feb. 30, 1549. 21.

(2) Litt. s. 12; Inst. 19.

(3) Shepp. Prac. Couns. 1; Bridgm. Prac. of Convey. 7.

rank, were tried and determined in parliament, of which there are examples in the reign of Henry II. and his successors. When the court of the constable and marshal declined, commissions were granted to the commanders, who were entitled lieutenant-generals, and if peers, lord-lieutenants, which contained a clause, authorizing them to enact ordinances for the government of the army under their command, and to sit in judgment themselves, or appoint deputies for that purpose, who constituted what was then called a council of war, wherein officers, not below the rank of a count or colonel, had a right to sit as assessors. The presiding officer was styled President of High Court of War.(1)

Towards the latter end of King James' reign, and the beginning of that of his successor, Charles I., commissions of this kind were very frequent, wherein it was directed that all controversies between soldiers and their captains, and all others, were to be tried in a council of war.(2)

At what precise period courts martial, according to their present form, were introduced, is not easy to ascertain. They are mentioned in the ordinances of war of King James II. A.D. 1688, with the distinction of general and special courts martial. After the revolution, the form and powers of courts martial were defined by an act of parliament, called the Mutiny Act, which, though temporary, has been renewed every year.(3)

XXIV.—*New Trials.*

When juries were first employed in criminal matters, it was not an unusual thing to award a *venire de novo*, when the jury had eaten or drunk, or committed any gross irregularity in giving their verdict; but afterwards it became a maxim in law, that a man should not be compelled to answer twice for the same offence. As the same objection did not operate in civil suits, the practice of granting new trials, though at this period fluctuating and irregular, became, in process of time, established, and is still existing.

In former reigns, we read of frequent instances of severity practised upon jurors for giving verdicts contrary to the opinion of the judges; but it was held in this reign, in the case of Bushel, a jurymen, who was imprisoned for giving a verdict of acquittal on the trial of Penn and Meade, that jurymen were not punishable for the verdict which they gave.(4)

SECTION VI.—STATUTE LAW UNDER JAMES II., A.D. 1685–1688.

I.—*Succession to the Throne determined by Parliament.*

The reign of James II. would not have been entitled to a place in this sketch, if it had not been for the manner of its termination as connected with the privileges of parliament. It has already been shown, that the succession to the throne

(1) Speed. 502; Hollingsh. and Stowe's Ann; 2 Hen. 2; Grosse. 60.

(2) Grose, 61; Rym. Foed. 1626.

(3) Grose.

(4) Ld. Herbert; Hist. Hen. 8. 6; Smith de Rep. 1. 3. c. 2; Vaugh. Rep. 152, et seq.

was in particular cases referred to the decision of parliament. Consistently, therefore, with this admitted principle, the two houses of parliament assuming, on the departure of King James out of England, that the throne was vacant, appointed a successor in the person of William and Mary, by which they fully established their right to regulate the succession to the throne in extraordinary emergencies.(1)

SECTION VII.—STATUTE LAW UNDER WILLIAM AND MARY,
A.D. 1689–1694.

I. Statutes of William and Mary. II. Bill of Rights. III. Mutiny Act. IV. Exclusion of Catholics from the Throne. V. Counsel allowed Prisoner on an indictment of Treason. VI. Appointment of the Judges.

I.—Statutes of William and Mary.

The circumstances under which William and Mary came to the throne being favourable to political liberty, several statutes were passed in the first year of their reign tending still farther to abridge the prerogative of the crown. The coronation oath was altered so as to make it more suitable to the existing state of things. The old coronation oath, which was probably derived from the Saxons, and is referred to by ancient writers, was, as the statute alleges, framed in doubtful terms with relation to ancient laws and constitutions.

II.—Bill of Rights.

The statutes referred to, known by the name of the Bill of Rights, contained many provisions in favour of the subject, which were for the most part in affirmance of the common law or of previous statutes.(2)

III.—Mutiny Act.

By a clause of this act the crown was restrained from keeping a standing army, or levying any sort of tax on the subject without consent of parliament; but that the king might be armed with power to preserve discipline in the army, a mutiny act was expressly passed in the second year of this king, which has ever since been annually renewed.

IV.—Exclusion of Catholics from the Throne.

The exclusion of Catholics from the throne had been unsuccessfully attempted during the reign of Charles II., when a bill passed the House of Commons to that effect, with the express view of setting aside the Duke of York, the pre-

(1) See Crabb's Hist. Eng. Law, ch. 34.

(2) See the contents of the Bill of Rights, *supra*, pages 143 & 144.

sumptive heir, on the score of his being a papist. This was thrown out at that time in the House of Lords, but carried with facility in this reign, when it was enacted, that every person holding communion with the see of Rome should be forever incapable to inherit or enjoy the crown of England.(1)

V.—Counsel allowed to Prisoner on an indictment of Treason.

As, by the common law, prisoners were not allowed counsel on an indictment of treason, unless some point of law arose proper to be debated, and by this restriction they were subjected to many hardships, a statute in the 7th year of this king empowered the justices in such cases to assign counsel not exceeding two. This privilege was extended by a statute in the subsequent reign to cases of parliamentary impeachments.(2)

VI.—Appointment of the Judges.

The common law recognised the king as the fountain of justice and general conservator of the peace of the kingdom, whose prerogative it was to appoint and remove all officers and ministers of justice at his pleasure; this was now restricted by a statute in regard to the judges whose commissions were to be made, not as formerly, *durante bene placito*—(during the king's pleasure),—but *quamdiu se bene gesserint*—(during good behaviour).—They might, however, be removed by an address of both houses of parliament. By another statute it was declared, that their patents of commission, which heretofore became vacant at the demise of the king, should continue in force for six months after the death of the king or queen.(3)

SECTION VIII.—STATUTE LAW UNDER WILLIAM III., A.D.
1694–1701.

I.—Arbitration.

Arbitration was a mode of deciding disputes, of which we read in the year-book of Edward II.; and the judgment, called in that case an award, was held to be as valid as the judgment of a court; this course of proceeding had not, however, heretofore been employed in complicated questions of real property: wherefore, to render it as extensively available as possible, a statute of this reign established the use of arbitration in all cases where the parties were willing to end any controversy, suit, or quarrel, in this manner. The award was, in this case, made conclusive in the courts against all the parties, whose agreement to abide by it was proved, unless the award was set aside for corruption or misbehaviour in the arbitrators.(4)

(1) Stat. 12 W.

(2) 3 Inst. 29; Finch. L. 386; Stat. 20 Geo. 2. c. 30.

(3) 2 Hawk. P. C. 1; Stat. 13 W. 3. c. 2; Stat. 7 and 8 W. 3. c. 27; 2 Hawk. P. C. 3.

(4) 3 Comm. 153; Stat. 9 & 10 W. 3. c. 15.

SECTION IX.—STATUTE LAW UNDER ANNE, A.D. 1701–1714.

*I. Copyright. II. Pressing Seamen. III. Union of England and Scotland.**I.—Copyright.*

The question, as to the rights of authors in their productions, appears to have been so far considered in this reign, that a statute declared that the author and his assigns should have the sole liberty of printing and reprinting his works for the term of fourteen years, and no longer, unless the author were living; in which case he was to enjoy the right for another term of fourteen years, but this was amended by subsequent statutes, particularly by that in the 54th year of William III., which changed the conditional term of fourteen years, to twenty-eight absolutely, and to the end of the author's life. The same privilege was granted by other statutes to the inventors of prints and engravings. How far the rights of authors were protected by the common law, has been since a much litigated question. In the Court of King's Bench, it was held that an exclusive and permanent copyright subsisted in authors by the common law; but this judgment was, in a subsequent case, reversed by the House of Lords.(1)

II.—Pressing Seamen.

An attempt was made, in the preceding reign, to do away with the practice of impressing seamen, by substituting a register of seamen in its place; but, being found ineffectual, and at the same time oppressive in its operation, the ancient practice was revived by a statute in this reign. As this practice was so repugnant to the spirit of the constitution, many were disposed to call in question its legality; but it scarcely admitted of a doubt in any court of justice, as has been ably shown by Sir Michael Foster.(2)

III.—Union of England and Scotland.

The union of England and Scotland, which, in the reign of King James, was projected and very much desired, was now happily effected in the 6th year of this queen, by an act of the legislature, from which time all acts of a general nature extended to England and Scotland, were comprehended under the name of Great Britain.(3)

(1) Stat. 8 Anne, c. 19; Stat. 4. 15 and 54 Geo. 3; Stat. 8 Geo. 2; 7 and 17 Geo. 23; Com. 407.

(2) Stat. 7 and 8 W. 3. c. 11; Stat. 9 Anne, c. 21; Foster, 154.

(3) Stat. 5 Anne. The leading articles of the union are found *ubi supar*, page 16 & 17.

SECTION X.—STATUTE LAW UNDER GEORGE II., A.D. 1727–1760.
GEORGE III., A.D. 1760–1820.*I. Marriage Act. II. English Language.**I.—Marriage Act.*

For the prevention of clandestine marriages, some parliamentary provisions were made in the two preceding reigns ; but the most important regulations were made by an act of this reign, which has, by distinction, been entitled the Marriage Act, by which all the modes of solemnizing marriage by banns, license, and special license, are minutely defined.(1)

II.—English Language.

An alteration was made in the proceedings of courts in this reign, which thoroughly re-established the use of the English language, that had, from a variety of causes, been banished from the courts of law since the Conquest. To this end, it was enacted, that matters of record, indictments, pleas, verdicts, and judgments, which had heretofore been in Latin, should for the future be in English ; but it was found necessary to explain, by a subsequent statute, that the statute was not to extend to such phrases as *quare impedit, nisi prius*, and others. It is worthy of observation, that the French continued in use among lawyers, in taking their notes, even as low down as the reign of Charles II.(2)

During the reign of George III. nineteen thick quarto volumes were added to the statute book ; but out of this immense collection there are but few points of law that fall within the scope of this work ; as in the 14th year of this king, an act of the parliament of Great Britain gave authority to the provincial legislature of the province of Quebec to make laws for the internal regulation of the country.(3) From that period, the laws passed in the mother country have no force in the province, unless Canada is especially named or included under general words.(4) The most important measures of this king are the prohibition of the slave trade—the union of the kingdoms of Great Britain and Ireland(5)—the abolition of the trial by battle. This last measure would probably not have passed even at this late period, had not an attempt been made to revive it in an atrocious case of murder.(6) During the reign of his successor, George IV., under the auspices of Sir Robert Peel the criminal law was materially improved. The following Appendix contains a notice of these improvements.

(1) Stats. 6 and 7 ; 7 and 8 W. ; 10 Anuc.

(2) Stat. 12. Geo. 2. c. 26.

(3) 14th Geo. 3, ch. 33.

(4) See the beginning of this work, page 17.

(5) Stat. 6, Geo. 1, c. 5.

(6) Stat. 59, Geo. 3, c. 46.

INTRODUCTION.

The country which is now called France, from the name of the Franks, who conquered it towards the close of the fifth century, was formerly called Gaul.

In times the most remote, two nations, the Iberians and the Celts, shared it. It had for its limits the Alps, the Rhine, the Pyrenees, and the Mediterranean Sea.

The Celts formed the greater part of the population: they drove the Iberians into Spain, and remained in possession of the whole country.

The Phœnicians afterwards established important colonies in the south of France, and among others, the city of Marseilles.

Another Celtic tribe: that of the Cimbrians made an eruption into Gaul, and maintained itself principally on the banks of the Seine and the Loire. They all received their Religion and their Laws from priests, called Druids, who exercised a very formidable power over all the country. They assisted at the Councils of the nation; they were the arbiters of war and peace; the controllers of the rights of men, the judges of public law; and gave over to general execration all who refused to submit to their decisions.

The invasion of the Cimbrians was succeeded by that of the Belgians, who spread over all Gaul.

The Gauls, the Cimbrians, and the Belgians, are indiscriminately known in history by the name of Gauls. They were divided into small tribes, almost always at war with each other, and seldom laid down their arms. Their wives assisted at their councils, fought by their sides, and excited their courage by frantic shrieks. They also (like the Germans) had bards who sang the exploits of their heroes. The Gauls were brave, but uncivilized. They neither foresaw the danger which menaced them by the increasing power of the Romans, nor the necessity of uniting to resist the arms of Julius Cesar, who vanquished their tribes one after other.

About the middle of the second century they embraced christianity, which was preached to them by St. Pothin, St. Denis, and others—and Gaul became one of the most flourishing provinces of the Roman empire.

Augustus and his successors founded in Gaul several military colonies. Lyons became the seat of the Roman empire. By degrees, and after many revolts, the conquered people adopted the language, the civilization, and even the religion of the Romans. Druidism resisted. The emperors endeavoured to exterminate it, but it found a refuge in the Island of Britain. It was its last.

The Gauls were divided into freemen and slaves. The proprietors of real estates, and those who professed any art or trade, were free ; the immense majority of the nation attached to the culture of the soil, lived in slavery.

The Franks inhabited the northern forests of Germany. Like the Gauls, they were divided into many independent tribes ; but, more prudent or better informed than the latter, they formed a strong confederacy for the purpose of resisting the attacks of the Romans. It is from this league that they took the name of Franks, which, it is said, signified at the time, "*Free-men*." These people were half civilized and half savage. They lived upon pillage and the chase. Their chiefs were sometimes hereditary and sometimes elected.

About the year 420 they thought of taking advantage of the weakness of the Romans, who were then harassed by other barbarians in the bosom of Italy itself, and attempted to form a permanent establishment in the country they had so frequently laid waste.

Pharamond, one of their chiefs, fell upon Belgium, took Tournay, Cambray, and other towns, and kept possession during a few years ; and, being thus possessed, caused himself to be considered as the founder of the French monarchy. Although that establishment did not last, this chief and his son Clodion were frequently obliged to abandon the country, and cross the Rhine ; but they shewed as much constancy to defend their conquest as the Romans did to wrest it from them, until an unforeseen event presented itself and insured their possession.

A barbarian, as ferocious as he was powerful : Attila, King of the Huns, who caused himself to be called the "Scourge of God," with an immense army issued forth from the recesses of the forests of Tartary and carried desolation into Gaul. To face the danger, all the nations in possession of the country, Romans, Burgundians, and Visigoths, conceived that it was necessary to unite and meet their common enemy.

Meroveus, a new chief of the Franks, came on with his warriors, took an active part in the battle at the Plain of Chalons in Champaign, and strongly contributed to defeat Attila. It is said that Ælius, the Roman General, to reward his bravery, left him in peaceful possession of that part of the country which was possessed by the Franks (1)—at least he was no more troubled by the Romans—and moreover transmitted the crown to his descendants. Thus he became the chief of the first race of the Kings of France.

(1) A. D. 420.

CHAPTER XXIII.

CHIEFS OF THE FRANKS.

Pharamond, A. D. 420. *Clodion*, 428. *Merovee*, 448. *Childeric I.*, 456.

SECTION I.—KINGS OF THE FRANKS.

Clovis, A. D. 484, to *Childebert I.*—*Clodomir*—*Thierry*—*Clotarie I.*—*Caribert*—*Contran*—*Sigebert*—*Chilperic I.*—*Clotaire II.*, A. D. 584—*Dagobert I.*, A. D. 628—*Clovis II.*, A. D. 638—*Childeric II.*, A. D. 656—*Thierry III.*, A. D. 673—*Clovis III.*, A. D. 692—*Childebert III.*, A. D. 696—*Dagobert III.*, A. D. 714—*Chilperic II.*, A. D. 716—*Thierry IV.*, A. D. 721—*Interregnum*, 5 years—*Childeric III.*, A. D. 742.

MANNERS AND CUSTOMS OF THE FRANKS DURING THE FIRST RACE OF THEIR KINGS.

The Franks, before the conquests of the Romans, in most respects, were similar to the savage tribes who still inhabit the forests of North America, accustomed to live by the chase and by pillage: murder and violence seemed to them faults so light that by their laws they could be expiated by a trifling fine. But cowardice was inexpiable: the man who fled or abandoned his arms in the battle, was for ever dishonoured.

The Franks fought on foot; cavalry to them was unknown. Their arms were, the battle axe or spear, and the javelin.

The booty was common property—and the share of each, without distinction, was regulated by drawing lots. The history of Clovis presents a remarkable instance of that law. St. Remy, bishop of Rheims, having claimed a consecrated vase, taken at the Saccage of Soissons, Clovis thought he might promise it; and, before the division, he claimed it as a reward for his bravery. "Thou shall have it, if it falls to your lot," replied a soldier; and as Clovis insisted, the fierce warrior smashed the vase into pieces with a blow of his axe. His right to do so must have been evident from the circumstance that Clovis did not dare to punish him instantly, but he waited his time; and, in the spirit of the age, as he was some days afterwards making a review of his troops, he found the arms of the insolent warrior in bad order, he censured him publicly and killed him with his own hand, bidding the soldier to remember the vase of Soissons.

The kingdom was hereditary, as pretended by some; while others hold that it was elective. The king or chief commanded the army, made peace or declared war, levied taxes, and filled up the principal offices of the state; sometimes he administered justice in person, but generally every one was judged by his own peers, that is to say, by people of his own class and profession, and by the laws of the nation.

The laws were made not by the king but by the nation, united in the assemblies of the *Champ de Mars*. At first all the Franks took a share in them, but when the nation became more numerous, the chiefs, and subsequently the bishops, superadded only, were admitted.

At these assemblies were regulated the *compositions*, namely: the fines the Franks were obliged to pay for every crime or misdemeanor—others established the law of succession: the most remarkable was that which excluded females from the succession to conquered lands, doubtless because they could be defended only by the force of arms—the crown being a conquest, females were excluded. This law became a fundamental law in France, and is named the Salique-law from the Salique Franks, with whom it was particularly enforced and brought to France by Pharamond.

The Franks composed but a small part of the population; the Gauls, the ancient possessors of the soil, were much more numerous, and had customs very different. The conquest of their country by the Romans had introduced the language, the laws, the customs, and the civilization of Rome, particularly in the south and in the neighbourhood of Italy. The people of the north and in particular of Brittany, had retained more of their ancient customs, and resembled a little nearer the Franks, with whom they mixed without difficulty. Latin became the language of southern Gaul; the old Celtic language continued to be that of the Bretons.

The conquest of Gaul by the barbarians rendered that difference still more striking; the two nations became distinct, the conquerors and the vanquished; but the latter in losing their riches and a portion of their lands, preserved their laws and their ancient customs, together with a spark of their civilization, which formerly emitted so brilliant a light; and while their conquerors gave them selves up exclusively to the use of arms, the Gauls remained tillers of the soil and tradesmen; they carried on the little trade which it was then possible to do. They performed ecclesiastical functions—and balanced by the influence of religion, the superiority which arms gave to their conquerors; the priests and bishops, almost all of Gallic religion, became the protectors, or at least the consolers, of their oppressed brethren. They settled their disputes, made regulations of police, presided over civil transactions. They thus saved the nation by interposing their power between the weakness of the disarmed Gauls and the ferocity of the conquerors of whom religion alone could soften the manners and restrain the excesses. Hence the origin of the power of the clergy—a more respectable cause cannot be imagined.

The people of the south had less to suffer than those of the north, because the Franks, after having driven away the Visigoths, found themselves too few in number to occupy their territory; they were but, as it were, spectators of the bloody contests which desolated the rest of the country. Rather tributaries than subjects, they soon endeavoured to regain their independence; and from the beginning of the seventh century they obeyed dukes of their nation, who took advantage of the civil commotions to strengthen their power, and even allied themselves with the Moors of Spain against the kings of France.

It may be easily imagined that literature and the arts perished in the midst of the general confusion, and that the laws did not improve. Ignorance became so

great that a council was obliged to prohibit the entering into the holy orders to those who were unable to read. However, a remarkable change took place in favor of a class of men who until then were very much degraded; and this change was one of the great benefits of christianity.

Slavery which was so cruel with the Romans, was by degrees abolished, except as to prisoners of war. Instead of slaves there were serfs obliged to till the ground, and who were so attached to the soil that they could not quit without the permission of their masters and lords; but these masters had no more the arbitrary right over them of life and death, and they were no longer sold as cattle of burthen.

SECTION II.—KINGS OF FRANCE DURING THE SECOND RACE, CALLED CARLOVINGIANS.

I. Pepin LeBref, 750. *II. Charlemagne*, 768. *III. Louis LeDebonaire*, 814. *IV. Charles LeChauve*, 840. *V. Louis LeBegue*, 877. *VI. Louis III. and Carloman*, 879. *VII. Charles LeGros*, 884. *VIII. Eudes*, 888. *IX. Charles LeSimple*, 898. *X. Raoul*, 928. *XI. Louis d'Outremer*, 936. *XII. Lothaire*, 954. *XIII. Louis V.*, 986.

MANNERS, CUSTOMS AND LAWS OF THE FRENCH DURING THE SECOND RACE.

Under the kings of the second race are found most of the laws usages and which existed under the kings of the first.

Pepin introduced into the army the use of cavalry, which soon became its principal force. All the nobles, covered with heavy armour, mounted on war horses, fought amidst their vassals on foot. This gave rise to chivalry. Under Charles LeChauve the feudal system was systematically arranged—all offices became hereditary. The great lords, such as the dukes of France, of Burgundy, of Aquitaine, of Normandy, the Counts of Flanders, of Champagne, of Auvergne, and of Toulouse, became the great vassals of the crown, and took the oath of fealty and homage, binding themselves to support the king in all his foreign wars. They in their turn, had vassals bound under the same obligations towards themselves; these had others—and this chain descended downwards to the private gentleman, possessor of a land called *fief*.

Each lord had the right of administering justice throughout his *fief*, saving the right of appeal to his immediate liege lord. The result was, that an incredible number of customs and laws were formed; for they were different not only in every province, but in every *fief*.

Charlemagne granted to the bishops a privilege which greatly increased their power, and put some restraints to the tyranny of the great; and prevented the people from falling into a state of complete slavery—this was the right of evoking every cause to their tribunal. He, therefore, who thought himself oppressed by his seignior or lord, had the right of immediately appealing to his bishop, who took him under his protection: the bishop had a powerful arm to cause his decisions to be respected; that was the power of excommunication.

As with the Germans or Saxons, when a cause seemed to be obscure, they had recourse to the ordeal—an appeal to the judgment of God; this judgment consisted on ordering a single combat between the accuser and the accused—the party who failed was considered guilty. It was believed that God would make a miracle rather than permit innocence to be wronged. This custom was abolished in France only in the thirteenth century.

To the assemblies of the Champ de Mars which existed under the first race, Charlemagne substituted those of the Champ de Mai. The nobility and the clergy alone were admitted, to deliberate on the interests of the state, and on different points of legislation. But this useful institution perished soon, in the midst of the prevailing anarchy, and at a later period a particular sort of jurisdiction was established to replace these assemblies—it was called *Cours Plenières*—in which the prince and the great men of the state displayed much magnificence, but which had more show than real utility. In spite of the efforts of Charlemagne, ignorance became more and more profound; it came at last to be considered a merit, and many deeds of those days are to be found, terminating in this singular manner—"The said lord or seignior declared he can not write, inasmuch as he is a gentleman."

Under Pepin, Astolphe, king of the Lombards, in possession of the north of Italy, undertook to extend his dominion in the provinces of the east. The people of these provinces applied to Pepin to resist the Lombards; Pepin crossed the Alps twice—defeated Astolphe—took Ravenna, and ceded to Pope Stephen, Rome and its territory. From this period, A.D. 756, is dated the temporal authority of the popes.

Charlemagne, superior to his age, by his genius, his courage, his constancy, and his learning, deserved the appellation of the great—given to him by his contemporaries. He defeated the king of the Lombards, and annihilated their kingdom; he gave wholesome laws to France—established schools: he published his "Capitularies," an admirable code of laws for that age, and which at a later date became the public law in Europe.

The family of Charlemagne had the same fate as that of Merovee and Clovis—it begun to reign with glory and ended shamefully.

Memorable events under the Carlovingian race.

Beginning of the temporal power of the popes, A. D. 756.

Of the kingdom of the Lombards, 774.

Submission of the Saxons, 785.

Beginning of the Empire of the West—first inroad of the Normans, 800.

Dismemberment of the empire of Charlemagne, 844.

Beginning of the Feudal System, 814.

Many of the provinces have independent chiefs—royal power is destroyed, 845.

Paris is besieged by the Normans, 885.

The empire lost to the house of Charlemagne, 912.

The domaine of the crown is reduced to the loan of £4000—death of Hugh, the Great, 956.

SECTION III.—DIRECT BRANCH OF THE CAPETS, 340 YEARS.

I. Hugues Capet, A. D. 987. II. Robert, 996. III. Henry I. 1031. IV. Philippe I. 1060. V. Louis Le Gros, 1108. VI. Louis VII. 1137. VIII. Philippe Auguste, 1180. IX. Louis VIII. Cur de Lion, 1223. X. Louis IX. or St. Louis.

MANNERS OF THE FRENCH UNDER THE FIRST BRANCH OF THE HOUSE OF CAPET.

To the system of pillage which the nobles had exercised towards the end of the second race, succeeded, by degrees, chivalry, with its principles of honor and loyalty. To fight for his sovereign liege lord—to sacrifice for him his fortune and his life—to devote himself to the defence of the weak, the widow and the orphan;—such were the duties of the true knight. The title could not be acquired but by a long trial, and the knight who was wanting in the duties of his noble profession was disowned. This institution contributed powerfully to soften the ferocious manners of the age, and to maintain public order. Another institution which assisted in maintaining the peace of the nation was, the *Truce of God*, for which it was indebted to religion. As the continual war which the lords or seigniors were waging, ruined the country and often destroyed the harvests, several councils ordered, under pain of excommunication, to suspend these wars at first from the Thursday morning to the Sunday evening of each week; then during Lent, and at the time of Advent, until the kings became at length more powerful, and caused them entirely to cease. The country then began to find breathing time, and was cultivated in security. The highways became less dangerous; traders were able to frequent them and carry from one province to another the produce of their industry. As the crusades gave an impulse to this commercial movement, important manufactures were established; at first in Flanders, and later in the southern provinces.

It was in the latter that civilization began, which made so much progress. At this time a great number of poets or troubadours appeared, who went from castle to castle, singing their odes, and gathering on all hands a rich tribute of admiration. The rich seigniors themselves soon disdained not to cultivate poetry: and if it were not still disgraceful to be without education, at least it was no longer so to know how to read and write.

While poetry flourished in the south, architecture made astonishing progress in the north; on all sides arose those admirable gothic churches, whose elevated spires, fretted vaults, and stained glass inspire even now a religious respect.

Important discoveries have been made. A monk of Aurillac found the pendulum clock; and facilitated the study of mathematical sciences by introducing the use of the Arabic numerals. At length the mariner's compass was discovered, which, at a later period, was to have so wide an influence on navigation.

The establishment of the *Communes*, which took place under Louis Le Gros, was another great benefit of this epoch; it gave the death blow to the feudal system,

1108; until then none in France were free, except the nobility and the clergy, all the rest were in bondage. Louis declared himself the protector of the inhabitants of towns who would purchase their liberty. They were allowed to write and name the municipal officers, to maintain the police within the precincts of their walls, and to defend their liberty even by the force of arms; but while the king took them under his own special care, he required their assistance both in arms and money. Public revenue increased, and the kings of France were enabled to have a standing army; these troops, it is true, were not regulars, but they sufficed to give to the crown an incontestable superiority over the vassals; they used it to strengthen public order, to abolish the ordeal, to establish parliaments or courts, and to render more equal justice. It is to this epoch that is traced the establishment of the principal dignitaries, or officers of the crown, such as marshal, admiral, constable, &c.

Thus everything was calculated to establish society on a regular basis. It can even be said that civilization had made greater strides under the first branch of the Capets than it made afterwards under the house of Valois.

Memorable events under the first branch of the Capetian race.

Beginning of the Truce of God, 1041.

Conquest of England by a vassal of the crown of France, the Duke of Normandy, 1066.

First crusade, 1099.

Communes regulated, 1120.

Freedom of the Rural Communes proclaimed, 1125.

Second crusades, 1147.

Third crusades, 1188.

Normandy is united to the crown—ibid of the Touraine—sixth crusade—Saint Louis made prisoner, 1250.

Last crusade, 1270.

Languedoc united to the crown, 1271.

Sicilian vespers, 1282.

Union of Champain, 1281.

Conquest of Flanders,

Memorable events under the Valois.

Gunpowder invented about 1328.

Battle of Cressy—cannon used for the first time,

The English received in Paris, 1419.

Joan d'Arc causes the siege of Orleans to be abandoned, 1429. She is put to death by the English, 1431.

The English are drawn out of Paris, 1436.

The art of printing is discovered, 1440.

The English are drawn out of all France, 1443.

America is discovered, 1492.

Beginning of the wars pretended to be for religion, 1562.

Massacre of St. Bartholomew, 1572.

Abjuration of Henry the Fourth, 1593. He enters Paris, 1594.

Edict of Nantes, 1598.

Foundation of the French academy, 1635.

SECTION IV—STATE OF FRANCE UNDER THE HOUSE OF VALOIS, TO THE REIGN OF LOUIS XI.

The reign of Louis XI. may be considered as an epoch of transition. The feudal system expires and the reign of absolute monarchy begins.

In the midst of her long misfortunes, France had undergone remarkable changes in her manners and in her constitution. The regal power, which, under Philippe le Bel and his children, appeared founded on a solid basis, was much shaken by the imprudence and the misfortunes of Philippe de Valois. The nobility became restless, and revived its ancient pretensions: the vassals aspired once more to their independence. The people on their side recently admitted under the name of *Third Estate*, to take part in the deliberations of the estates general, dreamed of liberty. From the reign of John, their deputies declared that no tax should be levied without their consent. They enquired even into the use made of the revenue, and wished to have the receipt of it in their own hands. Taking advantage of the captivity of this prince and of the inexperience of the regent, they went so far as to choose for him his ministers, and to form a confederacy to resist the royal power. But the experiment for liberty, made at a wrong time and carried too far, only increased the evils of the state. It was not with a power clogged with restraints that the king could stop the enemy, and on the one hand restrain the fury of the revolted peasantry, and on the other the no less cruel exactions of the nobles.

The genius of Charles the Fifth triumphed over so many obstacles, and established some order in the administration. It was only after thirty years of anarchy that Charles the Seventh, having vanquished all his foreign enemies, could at length give to his government the power which it needed. The people exhausted, thought no more of liberty; all they wanted was quiet. It was, therefore, easy for him to render his power, despotic.

Louis XI. found his course traced out, and had nothing to do but to pursue it.

In the meantime a revolution little favorable to the feudal nobility was taking place in the army. The discovery of gunpowder changed the whole system of war; a knight encircled in armour was only a man in the presence of cannon. Personal courage lost its importance, and it was necessary to change it for an entire new line of tactics. Hence the tremendous defeats of Crecy, of Poitiers, of Agincourt, &c. in which the flower of the French knighthood was destroyed by English archers.

Hence the destruction of the army of Charles the Imprudent, at Morat, by peasants on foot. For from the moment a peasant by one blow could destroy the bravest knight, the greatest number prevailed; and the kings of France, supported by a regular army always ready to march, and paid by the *Communes*, as was the practice adopted by Charles VII., could no longer meet with any obstacles.

This epoch was also marked by the discovery of playing at cards, and of theatrical exhibitions, as if mankind was bent on finding out new amusements in the same ratio as the increase of misfortunes.

These exhibitions were representations of the principal mysteries of religion, in bungling scenes, adapted only for the eyes and minds of an ignorant populace. More

important discoveries were made later, and particularly the art of printing, which caused a complete revolution through the whole world.

The establishment of post offices, due to Louis XI., was of great utility. The different parts of the kingdom were no longer strangers to each other. They were enabled to commune together, and these communications facilitated commercial transactions.

SECTION V.—STATE OF FRANCE IN THE 16TH CENTURY.

The sixteenth century is the most remarkable one of history. The mind of man was prodigiously developed, and the principal cause of this phenomenon was the discovery of printing. The old works, which during so many ages had slept in the dust of libraries, being reproduced with facility by means of the new invention, mankind felt a thirst for knowledge which it had not hitherto felt. Italy which was undergoing the advantage of civilization, while the rest of Europe was agitated with scenes of bloodshed, placed itself at the head of nations, and Pope Léon X., by encouraging all the arts, had the glory of giving his name to the age. While he was erecting the magnificent cupola of St. Peter, and was adorning the Vatican with the admirable paintings of Raphael, other artists covered with their immortal works other cities of Italy, which has always since been looked upon as the classic land of arts. Poets, historians, and *savans* of all descriptions, acquired at the same time a just share of celebrity.

The disastrous wars of the French in Italy, had, notwithstanding, a good effect. The spectacle of a civilization so far advanced, was not lost upon them. To the Gothic castles, surmounted with towers, surrounded by ditches, succeeded vast and commodious palaces. Francis I., by his liberality, attracted many artists to France. Its cities were embellished—luxury became less gross and more general—the language became polished, mild and harmonious. Amiot translated the lives of the great men of Plutarch with a grace which has not yet been surpassed; and Marot gave to poetry an elegance before unknown; at the same time the discovery of America and of the East Indies caused a political and commercial revolution. The navy underwent a great development. Portugal became the richest country of Europe; and Spain, mistress of immense regions where gold grew, enjoyed for some time an ascendancy so great that Charles V. dreamed of universal monarchy; and Philip II. thought he might one day sit on the throne of France, from which a faction had driven away the legitimate sovereign.

But to counterbalance these ameliorations rose up a frightful evil, the fruit of this same civilization. In the ardor men felt to become learned, they thought they had the right of examining all, even the mysteries of religion, and became thereby more easily the dupe of new doctrines. Luther, a proud monk, inveighed against the power of the popes and the riches of the clergy, drew to his standard the princes of Germany by the bait of ecclesiastical property which they got into their grasp, and the people, by easing them of the burden of confession. This sect increased with rapidity; whole kingdoms separated from the church of Rome; and bloody wars followed.

SECTION VI.—STATE OF FRANCE UNDER FRANCIS I., 1515 to 1547.

The regal power all the while was absolute. It was no longer thought necessary to consult the nation by calling the states general, unless it was indeed to impose upon the people new sacrifices, or to signify to them the will of the sovereign.

The Catholic religion was still the religion of the state, but the doctrines of independence preached by the protestants in Germany soon made their way into France. Symptoms of an approaching storm manifested themselves, although all was still peace; but the new sect had already divided the church of France, particularly in the southern provinces, which had been so much agitated three centuries before, by another sect called the Albigenses, whose theme was the same, the power of the pope, the riches of the clergy. Luther, aided by Jean Chauvin or Calvin, another apostate from the Roman Catholic faith, caused Germany and France to be covered with blood in wars and massacres, in which religion was made the ostensible cause—but the hatred noble families bore to each other, was the real reason these wars raged from the year 1560 to 1574, when Henry IV. returned to the Roman Catholic faith; and, with the view of avoiding the recurrence of the bloody conflicts which had so long existed between the protestants and the catholics, published the edict of Nantz, which ensured to all, liberty of conscience, and the peaceful exercise of religion. That edict restored peace to France. But Louis XIV., (1) before whom everything seemed to give way, thought that the declaration of his will was sufficient to cause the protestants of his kingdom to return to the catholic faith; he revoked the edict of Nantz, 1685, which Henry IV. had given eighty-seven years before; but experience proved that power alone is not sufficient to rule consciences. Fifty thousand families left France, and carried with them to foreign countries their wealth and their industry.

At the death of Louis XIV., the Duke of Orleans, a man of the most corrupt morals, and impiety, became the regent of the kingdom, the court followed the example of the regent; the city copied the court; the disorder became almost general, and rapidly prepared the way for the alarming change which was effected in the minds of the people, and which, at a later period, brought on the tremendous catastrophe of the French revolution; it was impossible that such a corrupt and contemptible government should not bring on misfortunes, and it did. England, aware of the state of affairs in France, provoked a war by court intrigues, and made it an European war. The army, notwithstanding its superiority in numbers, was attacked and defeated at Rosback, by Frederick II. king of Prussia; the navy was annihilated; all the colonies in the East Indies were taken by England. The Marquis de Montcalm nobly defended Canada and Quebec, but fell before its gates in 1759; with him fell the French possessions in America, which became the conquest of Great Britain on the 10th of February, 1763. On the 8th September, same year, Montreal, Detroit, Michillimakinac, and all the places within the government of Canada, were surrendered to His Britannic Majesty.

By the fourth article of the definitive treaty of peace, concluded on the 10th day of February, 1763, France renounced and guaranteed to Great Britain in full right, Canada and all its dependencies, as well as the Island of Cape Breton, and all other islands in the gulf and river of St. Lawrence; by the same article it was stipulated that the French in Canada should freely possess the Roman Catholic religion as far as the laws of Great Britain permitted.

226 TABLE OF THE KINGS OF ENGLAND AND FRANCE.

The government of the British Saxon chiefs of tribes has scarcely been noticed in history.

The history of England, begins with that of the Saxons in the year 450 after Christ. Upon the establishment of the Saxons and Angles in South Britain, after the year 450, the whole of that part of the island was divided into the seven following kingdoms: 1st. Kent, founded by Hengist in 455: it terminated in 823. 2d. Sussex, or South Saxons, founded by Ella in 491, ended about 609. 3d. East Angles, founded by Uffa in 751, ended 792. 4th. Wessex, or West Saxons, founded by Cedric in 519, ended about 1012. 5th. Northumberland, established by Ida in 547, and ended 827. 6th. Essex, or East Saxons, founded by Ereenwin in 527, and ended 810. 7th. Mercia founded by Cridda in 584, and ended in 324. This was often united with Deira.

<i>Saxon Kings.</i>	<i>Anno Domini</i>	<i>Stuarts.</i>	<i>Anno Domini</i>	<i>Anno Domini</i>	
Egbert,.....	800	James I.,.....	1603	Charles II., le Gros,..... 884	
Ethelwolf,.....	836	Charles I.,.....	1625	Eudes,..... 888	
Ethelbald,.....	857	(Cromwell,.....	1653)	Charles III., le Simple,... 898	
Ethelbert,.....	860	Charles II.,.....	1660	Raoul,..... 923	
Ethelred I.,.....	867	James II.,.....	1685	Louis IV., (d'Outremer) 936	
Alfred the Great,.....	872	William (III.) and Mary,	1689	Lothaire,..... 954	
Edward the Elder,.....	901	Anne,.....	1702	Louis V.,..... 986	
Athelstan,.....	925	<i>House of Hanover.</i>		Hugues Capet,..... 987	
Edmund,.....	941	George I.,.....	1714	Robert, le Pieux,..... 996	
Edred,.....	946	George II.,.....	1727	Henry I.,..... 1031	
Edwy,.....	955	George III.,.....	1760	Philippe I.,..... 1060	
Edgar,.....	959	George IV.,.....	1820	Louis VI., le Gros,..... 1108	
Edward the Martyr,.....	975	William IV.,.....	1830	Louis VII., le Jeune,.... 1137	
Ethelred II.,.....	978	Victoria,.....	1837	Philippe II., (Auguste).. 1180	
Edmund Ironside,.....	1016			Louis VIII.,..... 1223	
<i>Danish Kings</i>		<i>Chiefs of the Franks.</i>		Louis IX., Saint,..... 1226	
Canute,.....	1017	Pharamond,.....	420	Philippe III., le Hardi,... 1270	
Harold Harefoot,.....	1036	Clodion,.....	428	Philippe IV., le Bel,..... 1285	
Hardicanute,.....	1039	Mérovée,.....	448	Louis X., le Hutin,..... 1314	
Edward, Confess. Saxon,	1041	Childéric,.....	456	Philippe V., le Long,.... 1316	
Harold II.,.....	1065	<i>Kings of the Franks.</i>		Charles IV., le Bel,..... 1322	
<i>Norman Kings.</i>		Clovis,.....	481	<i>Valois Branch.</i>	
William I.,.....	1066	Childebert I.,.....	...	Philippe VI.,..... 1328	
William II.,.....	1087	Clodomir,.....	...	Jean, le Bon,..... 1350	
Henry I.,.....	1100	Thierry,.....	511	Charles V., le Sage,.... 1364	
Stephen,.....	1136	Clotaire I.,.....	...	Charles VI.,..... 1380	
<i>Plantagenets.</i>		Caribert,.....	...	Charles VII.,..... 1422	
Henry II.,.....	1154	Gontran,.....	...	Louis XI., le Sage,..... 1461	
Richard I., Cœur de Lion,	1189	Sigebert,.....	562	Charles VIII.,..... 1483	
John (Lackland),.....	1199	Chilperic I.,.....	...	<i>Valois Orleans Branch.</i>	
Henry III.,.....	1216	Clotaire II.,.....	584	Louis XII.,..... 1498	
Edward I.,.....	1272	Dagobert I.,.....	628	Francis I.,..... 1515	
Edward II.,.....	1307	Clovis II.,.....	638	Henri II.,..... 1547	
Edward III.,.....	1327	Childeric II.,.....	656	Francis II.,..... 1559	
Richard II.,.....	1377	Thierry III.,.....	673	Charles IX.,..... 1560	
<i>House of Lancaster</i>		Clovis III.,.....	692	Henri III.,..... 1574	
Henry IV.,.....	1393	Childebert III.,.....	696	<i>Bourbon Branch.</i>	
Henry V.,.....	1419	Dagobert III.,.....	711	Henri IV., le Grand,.... 1589	
Henry VI.,.....	1422	Chilperic II.,.....	716	Louis XIII.,..... 1610	
<i>House of York.</i>		Thierry IV.,.....	721	Louis XIV.,..... 1643	
Edward IV.,.....	1461	Interregnum, 5 years.	...	Louis XV.,..... 1715	
Edward V.,.....	1483	Childeric III.,.....	742	Louis XVI.,..... 1774	
Richard III.,.....	...	<i>Kings of the Carlovingian race.</i>		Republic,..... 1792	
<i>House of Tudor.</i>		Pepin, le Bref,.....	750	Napoleon { Consul,..... 1799	
Henry VII.,.....	1485	Charlemagne,.....	768	{ Empereur,.... 1804	
Henry VIII.,.....	1509	Louis I., le Debonnaire,	814	<i>Restoration.</i>	
Edward VI.,.....	1547	Charles le Chauve,.....	840	Louis XVII.,..... 1814	
Mary,.....	1553	Louis II., le Bègue,	877	Charles X.,..... 1824	
Elizabeth,.....	1558	Louis III., (Carloman)...	879	<i>Younger Bourbon Line.</i>	
				Louis Philippe I.,..... 1830	

COUTUME DE PARIS.

T R A N S L A T I O N

OF THE

TEXT OF THE "COUTUME DE PARIS:"

AS FOLLOWED

IN THAT PART OF THE PROVINCE OF CANADA FORMERLY CALLED

LOWER CANADA.

It may be proper to observe, that about the year 1772 : Sir Guy Carlton, then Governor Chief of the province of Quebec, selected a Committee of Canadian gentlemen, to make an abstract of those parts of the Custom of Paris which were received and practised in the said Province, during the time the French Government ruled the colony, which abstract was printed in London in 1772. By this we learn that the following articles were never introduced in the province to wit : Article 6, except at the end of the article. Articles 46, 48, 85, 86, 91, 95, 111, 112, 122, 163, 173, 174, 193, 219, 238 and 290. All the articles relative to the Garde Noble and Bourgeoise, including articles 265, 266, 267, 268, 269, 270, 271, and articles 347, 350, 351, 352, and part of 353. By the imperial statute 14 Geo. III, chapter 83, English laws and English tenure are preserved in that part of the country that was conceded and to be conceded by the king of England and his successors. By the imperial statute 14 Geo. IV., chap. 119, proprietors of *fiefs* are allowed to alter the tenure of their seigniories to that of free soccage.

By an ordinance of the Special Council, 3d Victoria, chapter 30, 8th June, 1840. the Ecclesiastics of the Seminary of Montreal, proprietors and seigniors of the seigniories in the island of Montreal, St. Sulpice, and Lake of Two Mountains, not only are allowed to commute with their *Censitaires* for their seigniorial dues, but must consent to the commutation, under certain conditions.

Thus the feudal tenure is falling on all sides ; and, in consequence, the first title of the Custom, treating of Fiefs, will be omitted in this work.

TEXTE

DE LA

COUTUME DE PARIS.

IL est bon d'observer au préalable que vers l'année 1772, Sir Guy Carlton, alors Gouverneur en Chef de la Province de Québec, nomma un comité des messieurs Canadiens qu'il chargea de faire un extrait de telles parties de la Coutume de Paris qui étaient reçues et suivies dans la dite Province sous le Gouvernement Français. Cet extrait fut imprimé à Londres en 1772, par lequel il est établi que les Articles suivants n'y furent jamais suivis, savoir : l'article 6, excepté à la fin de l'article ; les articles 46, 48, 85, 86, 91, 95, 111, 112, 122, 162, 172, 174, 193, 219, 238, et 290 ; non plus que tous les articles relatifs à la garde noble et bourgeoise ; les articles 265, 266, 267, 268, 269, 270, 271 ; les articles 347, 350, 351, 352, et partie de l'article 353.

Il est encore bon d'observer que par le Statut Impérial de la 14^e année de Geo. III., chapitre 83, les lois d'Angleterre, et la tenure des terres concédées par le Roi d'Angleterre et par ses successeurs seraient suivies dans la Province.

Que par le Statut Geo. IV., ch. 119, il serait permis aux propriétaires de fiefs, d'en changer la tenure, et substituer la tenure en franc et commun soccage.

Par une ordonnance du Conseil Spécial, 3 Victoria, ch. 30, 8 Juin 1840, il fut non seulement permis aux Ecclésiastiques du Séminaire de Montréal, de commuer la tenure de leur seigneurie en celle de soccage pour leurs droits seigneuriaux, mais ils y furent tenus sous certaines conditions ; ainsi la tenure féodale tombe de toutes parts ;—en conséquence on omettra dans cet ouvrage le titre premier.

TITLE II.—SUMMARY.

Art. 73, Exhibition of Titles. 74, Not followed. 75, Not followed. 76, Dues on sales. 77, Of sales concealed. 78, Dues on sales at a redeemable rent. 79, Rights on a Sheriff's sale. 80, On public sale of property belonging to Co-heirs for dues and fines. 82, Fines. 83, The superior Lord's dues on a Sheriff's sale, &c. 84, Dues on a common sale followed by a Sheriff's sale. 85 and 86, Are not followed; dues on an irredeemable ground rent.

SEIGNIORIAL DUES AND RIGHTS.

ART. 73.—It is lawful for a Seigneur to sue the purchaser or holder of any estate within his seignior, in order to make him produce and exhibit the titles of his acquisition, if any he has, so as to be paid the alienation fines and dues.

ART. 76.—The rights of the Seigneur on a sale, is one *denier* on every twelve, which is sixteen *deniers parises* for each *livre*. (See Art. 78.)

ART. 77.—For sales concealed and not notified to the Seigneur within 20 days of the purchase, a fine of half a crown and one quarter of a crown is due. (See Art. 81.)

ART. 78.—If any person buys for money or takes at a redeemable rent an estate being in the manor of a Seigneur, *Cencier* or *Foncier*, the purchaser of such an estate or lessee of the rent is held to pay to the Seigneur the rights or dues of sales of their purchase or principal of the rent, although the same be not redeemed. (See Art. 83, in the middle, and 87.)

ART. 79.—If the purchaser of an estate is obliged to give it up, and to leave it for the debts of his vendor, and in so doing it is sold and adjudged by *décret* at the suit of the creditors, the said purchaser succeeds to the right of the Seigneur to have and take to his profit the dues on the said *décret* such as the Seigneur would have taken, or it is in the choice of the said Seigneur to take them on restoring those which he has received from the first purchaser. (See Art. 84.)

ART. 80.—If the estate cannot be divided between co-heirs and is sold without fraud, no dues are due for the adjudication made to one of them; but if it is adjudged to a stranger, the purchaser owes dues on the sale. (See Art. 154, 155 and 157.)

ART. 81.—The *ventes* and fines are prosecuted by action simply. (See 73, 76, 78 Art. at the end.)

ART. 82.—No one is bound to take possession or seizin that does not choose, but if one takes possession, he must pay twelve *deniers Paris* for the possession. (See Art. 110, 135.)

TITRE II.—SOMMAIRE.

ART. 73, *Exhibition de Titre.* Art. 74, *cet article n'est pas suivi.* 75, *ditto.* 76, *Droits de Vente.* 77, *Ventes recelées.* 78, *Vente à Rente Rachetable.* 79, *En cas de Décret.* 80, *Licitation.* 81, *Action pour Rentes.* 82, *Saisine.* 83, *Un seul quint sur décret et sur un Acte de Vente—et* 84, *ditto.* 85 et 86 *ne sont pas suivis.* 87, *Rentes non Rachetables.*

CENSIVE ET DROITS SEIGNEURIAUX.

ART. 73.—Il est loisible à un Seigneur foncier ou censier, de poursuivre l'acquéreur nouvel détenteur d'aucun héritage étant en sa Censive ou Seigneurie foncière, afin d'apporter et exhiber les lettres d'acquisition d'icelui héritage, si aucunes y en a, pour être payé des drois de vente, saisines et amendes. (Voyez les articles 76, 78, 80, en la fin ; 81, 83, vers le milieu ; 87.)

ART. 74.—(Non suivi.)

ART. 75.—(Non suivi.)

ART. 76.—Les droits de vente dûs aux Seigneur censier, sont de douze deniers un denier, qui est pour chacun franc seize deniers parisis. (Voyez l'article suivant, et les 74, 78.)

ART. 77.—Pour ventes recelées et non notifiées au Seigneur censier dedans vingt jours de l'acquisition, est dû un écu et un quart d'écu d'amende au Seigneur censier. (Voyez l'article 81.)

ART. 78.—Si aucun achete à prix d'argent ou prend à rente rachetable héritage étant en la censive d'un Seigneur censier ou foncier, tel acheteur du dit héritage, ou preneur à rente, est tenu payer au Seigneur censier ou foncier les ventes du dit achat ou sort principal de la rente, encore qu'elle ne soit rachetée. (Voyez les articles 83 au milieu ; et 87.)

ART. 79.—Si l'acheteur d'un héritage est contraint déguerpir et délaisser l'héritage pour les dettes de son vendeur, et en ce faisant il se vend et adjuge par décret à la poursuite des créanciers, le dit acquéreur succède au droit du Seigneur, pour avoir et prendre à son profit les ventes du dit décret, telles qu'eût pris le dit Seigneur. Ou est au choix du dit Seigneur de les prendre, en rendant celles qu'il a reçues de l'acquisition première. (Voyez l'article 84, sur la fin.)

ART. 80.—Si l'héritage ne se peut partir entre cohéritiers, et se licite par justice sans fraude, ne sont dues aucunes ventes pour l'adjudication faite à l'un d'eux : Mais s'il est adjugé à un étranger, l'acquéreur doit ventes. (Voyez l'article 154, 155, au milieu ; et 157.)

ART. 81. Les ventes et amendes se poursuivent par action seulement. (Voyez les articles 72, 76, 78, vers la fin.)

ART. 82.—No one is bound to take possession or seizin that does not choose, but if one take possession he must pay twelve *deniers parisis* for the possession. (See Art. 130, 135.)

ART. 83.—For estates sold or adjudged by *décret*, charged with a redeemable rent, whether the said estate is held *en Fief* or *Roture*, there is due to the Seigneur of the Fief, the *quint denier* of the price, and to the Seigneur Censier the right of *ventes* as well for the price mentioned and contained in the contract or *décret* as for the principal sum of the said rents, although the said rent be not then redeemed. (See Art. 23, 78 and 87.)

ART. 84.—If one purchase an estate on condition that it shall be sold by *décret*, or if the purchaser in order to destroy the mortgages has it sold by *décret*, and such purchaser becomes the highest bidder, but one right of *quint* or *ventes* is due, as well for the contract of acquisition as for the *décret*, it is always at the option of the Seigneur to take the *quint* or *ventes* according to the price of the said contract or *décret*. (See Art. 79.)

ART. 85.—(Not followed.)

ART. 86.—(Not in force in Canada.)

ART. 87.—For all ground rents not redeemable, sold to others or given up by redemption since the first lease, *ventes* are due, having regard to the price of the sale or redemption of the said rents, the same as if the estate or part of it had been sold. (See Art. 78, 83, 349.)

TITLE III.—SUMMARY.

Art. 88, Distinction of moveable and immoveable property. 89, Obligations. 90, Mill furniture. 91, Not followed. 92, Timber, corn and hay. 93, Nature of property by destination. 94, Rents constituted for money. 95, Not followed.

DIVISION OF PROPERTY.

ART. 88.—In the Prevostship and Viscounty of Paris, there are two sorts or species of property only, namely, *moveable* and *immoveable*. (See Art. 94 and 95.)

ART. 89.—Notes and obligations made for sums of money, goods or other moveable property, are accounted and reputed to be moveable. (See Art. 93, 94 and 95.)

ART. 90.—Household utensils, which can be removed without being broken or injured, are also reputed moveable; but if they are fastened by iron or nails, or are set in with plaster, and are fixtures and cannot be removed without being broken or injured, they are accounted and reputed immoveables, as also a wind mill and water mill or press built in a house, are reputed immoveables, when they cannot be taken out without being broken or taken asunder, otherwise they are reputed moveable. (See the following Articles.)

ART. 91.—(Not followed.)

ART. 82.—Ne prend saisine qui ne veut, mais si on prend saisine, sera payé douze deniers parisis pour la saisine. (Voyez les articles 130, 135.)

ART. 83.—Pour héritages vendus ou adjugés par décret à la charge de rente rachetable, soit que le dit héritage soit fief ou roture, est dû au Seigneur de fief le quint denier du prix : Et au censier le droit de ventes, tant pour le prix contenu es contrat ou décret, que pour le sort principal des dites rentes, encore que les dites rentes ne soient lors rachetées. (Voyez les articles 23, 78, 87.)

ART. 84.—Si aucun achete un héritage à la charge qu'il sera adjugé par décret, ou bien si l'acheteur pour purger les hypothèques le fait décréter, et tel acheteur est adjudicataire, n'est dû qu'un seul droit de quint ou vente, tant pour le contrat d'acquisition que le décret : Est toutefois au choix du Seigneur de prendre les dits quints ou ventes selon le prix du dit contrat ou décret. (Voyez l'article 79.)

ART. 85.—(Non suivi.)

ART. 86.—(Non suivi.)

ART. 87.—De toutes rentes foncières non rachetables vendues à autres, ou délaissées par rachat depuis le premier bail, sont dues ventes, eu égard au prix de la vente ou rachat d'icelle rente, tout ainsi que si l'héritage ou partie d'icelui était vendu. (Voyez les articles 78, 83, 349.)

TITRE III.—SOMMAIRE.

Art. 88, *Deux espèces de biens.* 89, *Obligation.* 90, *Ustensiles d'Hôtel, &c.* 91, *Non suivi.* 92, *Bois, foin et grains.* 93, *Destination de père et mère.* 94, *Rentes constituées.* 95, *Non suivi.*

DES MEUBLES ET IMMEUBLES.

ART. 88.—En la Prevôté et Vicomté de Paris, il y a deux sortes et espèces de biens seulement : c'est à sçavoir, meubles et immeubles. (Voyez les art. 94, 95.)

ART. 89.—Cédulés et obligations faites pour sommes de deniers, marchandises ou autres choses mobilières, sont censées et réputées meubles. (Voyez les articles 93, 94, 95.)

ART. 90.—Ustensiles d'Hôtel qui se peuvent transporter sans fraction et détérioration, sont aussi réputés meubles : mais s'ils tiennent à fer et à cloux, ou sont scellés en plâtre, et sont mis pour perpétuelle demeure, et ne peuvent être transportés sans fraction et détérioration, sont censés et réputés immeubles, comme un moulin à vent et à eau, pressoir édifié en une maison, sont réputés immeubles quand ne peuvent être ôtés sans dépecer ou desassembler, autrement sont réputés meubles. (Voyez les deux articles suivans.)

ART. 91.—(Non suivi.)

ART. 92.—Wood, wheat, hay or grain, cut down, being in the field and not taken away, are reputed moveable, but when it is still growing and not cut down, it is reputed immoveable. (See Art. 74 and 231.)

ART. 93.—Sums of money given by father, mother, grandfather or grandmother, or other ancestor to their children, in contemplation of marriage to be employed in the purchase of estates, although they should not be so employed, are reputed immoveable on account of such appointment. (See Art. 216, 232, 246, 259.)

ART. 94.—Rents constituted or created for money, are reputed immoveable until they be re-purchased, but in case those belonging to minors should be re-purchased during their minority, the purchase money or the employment of it in other rents or estates are accounted of the same nature and quality of immoveables as the rents were, which are so purchased, to return to the relatives of the side and line from whom the said rents proceeded. (See Art. 240, 242, 259 and 329.)

ART. 95.—(Not followed.) <

TITLE IV.—SUMMARY.

Art. 96, *Action of complaint in re-entry.* 97, *Universality of moveables.* 98, *Simple seizin.*

COMPLAINT.

ART. 96.—When the possessor of any estate or real right reputed immoveable is troubled and hindered in his possession and enjoyment, he can, and the law permits him, to complain and bring an action *en cas de saisine et de nouvelleté* within a year and a day of the trouble made and given him, as to the estate or real right against him who has troubled him: (See Art. 98, 125, and the end of 130.)

ART. 97.—No person can institute an action in complaint for a particular moveable, but may for a universality of moveables as for a succession of moveables. (See Art. precedent and 144.)

ART. 98.—When any one has enjoyed or possessed a *rente* (annuity), and has taken and received the same on an estate before and during ten years and for the greater part of that time, if he is troubled and disturbed in the possession and enjoyment of it, he may institute and prosecute the action of *simple seizin* personally against him or them who have so troubled him, and demand to be replaced in the possession in which he was before the said disturbance. (See Art. 96.)

ART. 92.—Bois coupé, bled, foin, ou grain soyé ou fauché, supposé qu'il soit encore sur le champ, et non transporté, est réputé meuble : Mais quand il est sur pied et pendant par la racine, est réputé immeuble. (Voyez l'article précédent, et les 74, 231.)

ART. 93.—Somme de deniers donnée par père, mère, ayeul ou ayeule, ou autres ascendans, à leurs enfans en contemplation de mariage, pour être employée en achat d'héritages, encore qu'elle n'ait été employée, est réputée immeuble à cause de la destination. (Voyez les articles 216, 232, 246, 259.)

ART. 94.—Rentes constituées à prix d'argent, sont réputées immeubles jusqu'à ce qu'elles soient rachetées : toutefois au cas que celles qui appartiennent à mineurs, soient rachetées pendant leur minorité, les deniers du rachat ou le rempli d'iceux en autres rentes ou héritages, sont censés de même nature et qualité d'immeubles, qu'étaient les rentes ainsi rachetées, pour retourner aux parens du côté et ligne dont les dites rentes étaient procédées. (Voyez les articles 230, au milieu ; 232, 259, 329.)

ART. 95.—(Non suivi.)

TITRE IV.—SOMMAIRE.

Art. 96, De la complainte. 97, Chose mobilière. 98, Forme de la simple saisine.

COMPLAINTE.

ART. 96.—Quand le possesseur d'aucun héritage, ou droit réel réputé immeuble, est troublé et empêché en sa possession et jouissance, il peut et lui loit soi complaindre et intenter poursuite en cas de saisine et de nouvelleté, dedans l'an et jour du trouble à lui fait et donné au dit héritage ou droit réel contre celui qui l'a troublé. (Voyez les articles 93, 125, et sur la fin du 130.)

ART. 97.—Aucun n'est recevable de soi complaindre et intenter le cas de nouvelleté, pour une chose mobilière particulière : mais bien pour universalité de meubles, comme en succession mobilière. (Voyez l'article précédent et le 144.)

ART. 98.—Quand aucun a joui et possédé aucune rente, et icelle prise et perçue sur aucun héritage paravant et depuis dix ans ; et par plus grande partie d'icelui tems, s'il est troublé et empêché en la possession et jouissance d'icelle, il peut intenter et poursuivre le cas de simple saisine personnelle contre celui ou ceux qui ainsi l'ont troublé ; et requérir être remis en la possession en laquelle il était paravant la dite cessation. (Voyez l'article 96.)

TITLE V.—SUMMARY.

Art. 99, Personal actions and mortgages. 100, Explanation and modification. 101, Ditto. 102, Third possessor. 103, Contestation in the cause. 104, Explanation. 105, Compensation. 106, Reconvention. 107, Cédule or private writing. 108, Transfer. 109, Lessee, how quit of a rent charge, 100, Purchaser of the first lessee. 111, Not followed. 112, Not followed.

PERSONAL ACTIONS AND REAL ACTIONS.

ART. 99.—The possessors and proprietors of estates owing *cens* or other real and annual charges, are bound personally to pay and acquit those charges to him or them to whom they are due, and the arrears which become due during their time for as much and as long as they remain possessors and proprietors of the said estates or a part or portion of the same. (See Art. 101 and 221, 332 and 333.)

ART. 100.—It is understood by charges and dues when the estates are specially obliged, or that there is a general obligation without specialty, or that there is a clause that the special does not derogate from the general, nor the general from the special, in which case the possessor is holden personally to pay the said arrears. (By the ordinance of the Special Council, 4 Vict., chap. 30, 1841; the mortgage must be special.) (See the preceding Art.)

ART. 101.—The possessors and proprietors of any estate bound or mortgaged for the payment of any rents or other real or annual charges, are held *hypothécairement* to pay the same with the arrears that are due, or at least are held to leave the said estate, to be seized and adjudged by *décret* to the highest and last bidder in default of payment of the arrears which are due thereon, without discussion, and if the rent is *foncière*, (irredeemable,) the estate ought to be adjudged at the charge of the rent. (See Art. 99, 100, 333.)

ART. 102.—When a third person, possessor of an estate, is prosecuted for the payment of a rent with which the said estate is charged, which was sold to him without the charge of the rent, and of which he had no knowledge before the prosecution, after he has summoned his *garant*, (he who sold and promised to guaranty the said estate which he has not done), the said third possessor so prosecuted before contesting the demand, can renounce to the said estate, and in so doing is not held to pay the rents and arrears, even if the said rents and arrears became due during his enjoyment and before the said renunciation. (See Art. 101, and the two following.)

ART. 103.—And after contestation, such possessor can renounce to the estate on paying arrears. (See the preceding Art. and the following about the middle.)

ART. 104.—Contestation in the cause is when there is a rule or order made on the demands and defence of the parties or when the defendant is in default and his defence dismissed. (See the preceding Art. and the Art. 102 and 140.)

TITRE V.—SOMMAIRE.

Art. 99, Comment s'acquittent les charges personnelles. 100, Explication. 101, Ditto. 102, Déguerpissement du Tiers Détenteur. 103, Contestation en cause. 104, Explication de ces termes. 105, Compensation. 106, Réconvention. 107, Cédule ordonnance de 1539. 108, Transport. 109, Preneur à cens. 110, Acquéreur du preneur. 111, Non suivi. 112, Ditto.

DES ACTIONS PERSONNELLES ET HYPOTHEQUES.

ART. 99.—Les détenteurs et propriétaires d'héritages chargés et redevables de cens, rentes ou autres charges réelles et annuelles, sont tenus personnellement de payer et acquitter icelles charges à celui ou à ceux à qui dues sont, et les arrérages échus de leur tems, tant et si longuement que les dits héritages, ou de partie et portion d'iceux, ils seront détenteurs et propriétaires. (Voyez l'article 101, et le 221, au commencement ; 332, 333.)

ART. 100.—Et s'entendent chargés et redevables, quand les dits héritages sont spécialement obligés, ou qu'il y a générale obligation sans spécialité, ou qu'il y a clause que la spéciale ne déroge à la générale, ni la générale à la spéciale. Es quels cas le détenteur est tenu personnellement des dits arrérages. (Voyez l'article précédent.) (Par l'ordonnance du Conseil Spécial, 4 Vic. ch. 30, 1841, toutes hypothèques doivent être spéciales).

ART. 101.—Les détenteurs et propriétaires d'aucuns héritages obligés ou hypothéqués à aucunes rentes ou autres charges réelles ou annuelles, sont tenus hypothécairement icelles payer avec les arrérages qui en sont dues, à tout le moins sont tenus iceux héritages délaissés pour être saisis et adjugés par décret au plus offrant et dernier enchérisseur, à faute de paiement des arrérages qui en sont dûs, sans qu'il soit besoin de discussion : et si la rente est foncière doit être l'héritage adjugé à la charge de la rente. (Voyez les articles 99, 109, au commencement 333.)

ART. 102.—Quant un tiers détenteur d'héritage est poursuivi pour raison d'une rente dont est chargé le dit héritage qui lui a été vendu sans la charge de la dite rente, et dont il n'avait eu connaissance paravant la dite poursuite, après qu'il a sommé, son garant, ou celui qui lui a vendu et promis garantir le dit héritage, lequel défaut de garantie, le dit tiers détenteur ainsi poursuivi paravant contestation en cause peut renoncer au dit héritage ; et en ce faisant, il est tenu de la dite rente et arrérages dicelle, supposé même que les arrérages fussent et soient échus de son tems et paravant la dite renonciation. (Voyez l'article précédent et les deux suivans avec le 153.)

ART. 103.—Et après contestation, tel détenteur peut renoncer à l'héritage, en payant les arrérages de son tems, jusqu'à la concurrence des fruits par lui perçus, si mieux il n'aime rendre les dits fruits. (Voyez l'article précédent, et le suivant vers le milieu.)

ART. 105.—Compensation takes place between a debt clear and liquidated with another equally clear and liquidated, and not otherwise.

ART. 106.—Reconvention in the Lay Court does not take place if it does not depend on the action, and that the demand in reconvention be the defence against the action first instituted, and in that case the defendant by means of his defence can constitute himself plaintiff. (See Art. 273.)

ART. 107.—A private note which contains a promise to pay, gives mortgage from the day of the concession or acknowledgement of it made in Judgment or before a notary, or from that on which by the Judgment it is taken for confessed or from the day of the denial in case that afterwards it be verified—ordinance of 1539 (See Art. 284.)

ART. 108.—A simple transfer does not give a title, and it is necessary to give the debtor notice of the transfer and a copy of the transfer before the execution. (See Art. 20, 178, 203, 284.)

ART. 109.—If any one has taken an estate charged with *cens* or *rentes* at a certain price per annum, he can renounce in judgment, the other party being present or cited, on paying all the past arrears and the next ensuing term—although by acknowledgement in writing, he had promised to pay the said rents—and obliged all his property by such promise as long as he is proprietor—if he had not promised on taking the land to make some improvement, which he has not done or that he has promised to guarantee and cause the said rent to be paid and has obligated all his property, on leaving the estate in as good state and order as it was when he took possession of it. (See the following Art. and Art. 101.)

ART. 110.—He who is not the lessee but purchaser of the lessee, at the charge of the rent alone, without mention of any other charges, such as to make ameliorations, to furnish and pay the rent, and leave the estate in good order, can renounce, provided he has not expressly promised to acquit and guarantee his vendor or lessor. (See Art. 109.)

ARTS. 111 and 112.—(Not followed.)

TITLE SIXTH.

ART. 113.—If any person has enjoyed and possessed an estate or rent by a just title, and in good faith, as well by himself as by his predecessors, in whose rights he stands fairly and without disquietude for ten years the proprietor being present, and twenty years if absent—the proprietor being of full age and not privileged, he acquires prescription of the said estate or rent. (See the following Art., and Arts. 116 and 118.)

ART. 114.—When any one has possessed and enjoyed by himself and his predecessors in whose rights he stands, an estate or rent by a just title and in good faith for ten years, the proprietor being present, and twenty years if absent—persons of full age and not privileged, freely—and peaceably without any disquietude of any

ART. 105.—Compensation a lieu d'une dette claire et liquide à une autre pareillement claire et liquide, et non autrement. (Voyez l'article 317, sur la fin.)

ART. 106.—Reconvention, en cour laye n'a lieu, si elle ne dépend de l'action, et que la demande en reconvention soit la défense contre l'action premièrement intentée : Et en ce cas le défendeur par le moyen de ses défenses, peut se constituer demandeur. (Voyez l'article 273.)

ART. 107.—Cédula privée qui porte promesse de payer, emporte hypothèque du jour de la confession ou reconnaissance d'icelle faite en jugement, ou par devant Notaires, ou que par jugement elle soit tenue pour confessée, ou du jour de la dénégation, en cas que par après elle soit vérifiée. (Voyez l'article 284.)

ART. 108.—Un simple transport ne saisit point il faut signifier le transport à la partie, ou en bailler copie auparavant que d'exécuter. (Voyez l'article 20, à la fin ; 178, 203 ; 284, au commencement.)

ART. 109.—Si aucun a pris un héritage à cens ou rente à certain prix par chacun an, il y peut renoncer en jugement, partie présente ou appelée, en payant tous les arrérages du passé et le terme ensuivant : Jaçoit que par Lettres il eut promis payer la dite rente, et obligé tous ses biens : Et s'entend telle promesse tant qu'il est propriétaire : si non que par les Lettres d'accensement, il eut promis mettre aucun amendement, ce qu'il n'eut fait : ou qu'il eut promis fournir et faire valoir la dite rente, et à ce obligé tous ses biens, en laissant toutefois l'héritage en aussi bon état et valeur qu'il était au tems de la prise. (Voyez l'article suivant, et les 101, au milieu ; 101, vers la fin.)

ART. 110.—Celui qui n'est preneur, mais est acquéreur du preneur, à la charge de la rente seulement, sans faire mention d'autres charges, comme de mettre amendement, fournir, et faire valoir et laisser l'héritage en bon état, il peut renoncer, pourvu qu'il n'ait promis expressément acquitter et garantir son vendeur et bailleur. (Voyez l'article précédent.)

ART. 111 et 112.—(Non suivi.)

TITRE VI.—SOMMAIRE.

Art. 113, Prescription de dix et vingt ans. 114, Ditto contre les rentes et hypothèques. 115, Règle. 116, Présent. 117, Prescription contre le douaire. 118, De trente ans. 119, Rentes constituées à prix d'argent. 120, Faculté de reméré. 121, Exception et limitation. 122, Non suivi. 123, Cens. 124, Arrérages de Cens. 125, Prescription annale contre les médecins, &c. 126, Contre les boulangers, &c. 127, Prescription d'un an. 128, Contre les Taverniers.

PRESCRIPTION.

ART. 113.—Si aucun a joui et possédé héritage ou rente à juste titre et de bonne foi, tant par lui que par ses prédécesseurs, dont il a le droit et cause, franchement et sans inquiétation par dix ans entre présens et vingt ans entre absens, âgés et non privilégiés, il acquiert prescription du dit héritage ou rente. (Voyez l'article suivant ; et les 116, 118.)

ART. 114.—When any one has possessed and enjoyed by himself and his predecessors in whose rights he stands, an estate or rent by a just title and in good faith for ten years, the proprietor being present, and twenty years if absent—persons of full age and not privileged, freely—and peaceably without any disquietude of any rent or mortgage: the possessor of such estate or rent has acquired prescription against all rents or mortgages claimed to be on the said estate or rent. (See Art. 113.)

ART. 115.—And the said prescription takes place even if the said rent be paid by him who has constituted it or another in default of the possessor. If the creditor of the rent had just cause to be ignorant of the alienation, because the debtor of the said rent has always remained in the possession of the estate, either by means of a lease or retaining the *usufruct*, precarious constitution or others of a like nature, during such time the prescription does not run. (See the end of Arts. 274, 275.)

ART. 116.—Those are reputed present who are living in the town, prevostship and vicounty of Paris. (See the two following Art. and Art. 113 and 114.)

ART. 117.—In matters of dower, prescription begins to run from the day of the decease of the husband only, against persons of full age and not privileged. (See Arts. 249, 255, and 256.)

ART. 118.—If any person has enjoyed, used and possessed an estate or rent, or any other thing prescriptible, for the space of thirty years continually, as well by himself as by his predecessors, freely and publicly, and without any disquietude: supposing that he exhibits no title, he acquires prescription against persons of full age and not privileged. (See the Art. 12, near the end; 120, 123, and at the end of Arts. 124 and 186.)

ART. 119.—Power to re-purchase a *rente constituée* for money, cannot be prescribed by any length of time whatever; but such rents are always redeemable even if a hundred years have elapsed. (See the beginning of Arts. 12, 124, 186.)

ART. 120.—The power given by contract to re-purchase an estate at any time, is prescribed in thirty years against persons of full age and not privileged. (See Arts. 113, 123, 124, and 186.)

ART. 121.—What is before mentioned has not place for rents of leases of estates on houses situated in the city and suburbs of Paris, which rents are always redeemable, if they are not the first after the *cens* and ground rent. (See the preceding Art. and 73, 74, 78, and 87.)

ART. 122.—(Not followed.)

ART. 123.—*Cens* being the mark of direct Seigniority is prescriptible by *seigneur* against *seigneur*, and can be prescribed by thirty years against persons of full age and not privileged; and by forty years against the church, if there is no title or recognisance of the said *cens*, or that the possessor has acquired the estate at the charge of the said *cens*. (See Art. 12 and 113.)

ART. 114.—Quand aucun a possédé et joui par lui et ses prédécesseurs, desquels il a le droit et cause, d'héritage ou rente à juste titre et de bonne foi par dix ans entre présens, et vingt ans entre absens, âgés et non privilégiés, franchement et paisiblement, sans inquiétation d'aucune rente ou hypothèque: tel possesseur du dit héritage ou rente a acquis prescription contre toutes rentes ou hypothèques prétendues sur le dit héritage ou rente. (Voyez l'article précédent.)

ART. 115.—Et a lieu la dite prescription, supposé que la dite rente soit payée par celui qui l'a constituée, ou autre au déçu du tiers débiteur: toutefois si le créancier de la rente a eu juste cause d'ignorer l'aliénation, parceque le débiteur de la dite rente serait toujours demeuré en possession de l'héritage par le moyen de location, retention d'usufruit, constitution de précaire, ou autres semblables, pendant le dit tems la prescription n'a cours. (Voyez vers la fin des articles 274 et 275.)

ART. 116.—Sont réputés présens ceux qui sont demeurans en la ville, prévôté et vicomté de Paris. (Voyez les deux articles suivans, et les 113, 114.)

ART. 117.—En matière de douaire la prescription commence à courir du jour du décès du mari seulement, entre âgés et non privilégiés. (Voyez les articles 249, 255, et 256.)

ART. 118.—Si aucun a joui, usé, et possédé d'un héritage ou rente, ou autre chose prescriptible par l'espace de trente ans continuellement, tant par lui que par ses prédécesseurs franchement, publiquement, et sans aucune inquiétation: supposé qu'il ne fasse apparoir de titre, il a acquis prescription, entre âgés et non privilégiés. (Voyez les articles 12, sur la fin; 120, 123, et sur la fin les 124, 186.)

ART. 119.—Faculté de racheter rentes constituées à prix d'argent, ne se peut prescrire par quelque laps de tems que ce soit: ainsi sont telles rentes rachetables à toujours, encore qu'il ait cent ans. (Voyez au commencement des articles 12, 124, 186.)

ART. 120.—La faculté donnée par contrat de racheter héritage ou rente d'héritage à toujours, se prescrit par trente ans entre âgés et non privilégiés. (Voyez l'article 118, le 123, au commencement; et les 124 et 186, en la fin.)

ART. 121.—Ce que dessus n'a lieu es rentes de bail d'héritages sur maison assises en la ville et fauxbourgs de Paris, lesquelles rentes sont à toujours rachetables, si elles ne sont les premières après le cens et fonds de terre. (Voyez l'article précédent, le suivant, et les 73, 74, 78, 87.)

ART. 122.—(Non suivi.)

ART. 123.—Cens portant directe Seigneurie est prescriptible par seigneur contre seigneur, et se peut prescrire par trente ans contre âgés et non privilégiés, et par quarante ans contre l'église, s'il n'y a titre ou reconnaissance du dit cens, ou que le détenteur ait acquis à la charge du dit cens. (Voyez les articles 12 et 112.)

ART. 124.—The right of *cens* cannot be prescribed by the purchaser of an estate against the *seigneur censier*, even if a hundred years are elapsed when there is an old title or acknowledgment made of the said *cens*; but the proportion of the *cens* and arrears can be prescribed by twenty years against persons of full age and not privileged. (See Arts. 12, 119, 355, and 358.)

ART. 125.—Physicians, surgeons, and apothecaries, must institute their actions within ~~6~~ ⁵ year, and after the said ~~5~~ ⁵ year they are not receivable. (See Art. 96, at the end; and 127.)

ART. 126.—Merchants, tradesmen, and other vendors of merchandize, and retailing dealers, such as bakers, pastry cooks, mantua-makers, saddlers, butchers, harness makers, lacemen, blacksmiths, keepers of cook-shops, cooks, and others of the like description cannot bring an action after six ~~years~~ from the day of the delivery of their merchandizes and provisions without settlement of account, notification or citation legally made, note or obligation. (See the former and following Art.)

ART. 127.—Drapers, haberdashers, grocers, watchmakers, and other wholesale merchants, masons, carpenters, tilers, barbers, servants, labourers, and mercenaries, cannot bring an action or demand for their merchandizes, salary or services after the expiration of one year, to be reckoned from the day of the delivery of the merchandizes, or discharge, if there is not a note, obligation, settlement of account in writing, or judicial notification. (See the two preceding Art.)

ART. 128.—Tavern-keepers and publicans have no action for wine or other liquors by them sold in retail *par assiette* in their houses. (See Art. 119 and 175.)

TITLE VII.—SUMMARY.

Art. 129, *Who can redeem, &c.* 130, *Time in which redemption can be claimed.* 131, *Is the same as well for minors as for majors.* 132, *Beginning of the year commences.* 133, *First purchaser.* 134, *Fruits.* 135, *Infeoffment.* 136, *Re-imbursement.* 137, *Redeemable rent.* 138, *Arrears of rent.* 139, *Rule as to descent.* 140, *Offers to be made.* 141, *Preference.* 142, *Heirs of the vendor.* 143, *Estate taken in exchange.* 144, *None of moveables.* 145, *Money given to-boot in an exchange.* 146, *Repairs made during the year.* 147, *Sale of an usufruit.* 148, *Purchase from the king.* 149, *Leases.* 150, *Sheriff's sales.* 151, *Vacant estates.* 152, *Acquest.* 153, *Estate adjudged to a curator.* 154, *Licitation.* 155, *Estate redeemed during a matrimonial community.* 156, *Children of the line; the father not.* 157, *Retrait mi denier.* 148, *Who cannot inherit cannot redeem of the feudal and lineal redemption in competition.*

LINEAL REDEMPTION.

ART. 129.—When any person has sold and transferred his own estate or *rente fonciere* to a stranger of the side and line which his said estate or *rente fonciere*

Abolished 18th Vic C. 102
1855

ART. 124.—Le droit de cens ne se prescrit par le détenteur de l'héritage contre le seigneur censier, encore qu'il y ait cent ans, quand il y a titre ancien ou reconnaissance fait du dit cens. Mais se peut la quotité du cens et arrérages prescrire par trente ans entre majeurs âgés et non privilégiés. (Voyez les articles 12, 119; 355, au commencement; et 358.)

ART. 125.—Les médecins, Chirurgiens, et apothicaires doivent intenter leurs actions dedans un an, et après le dit an ne sont recevables. (Voyez les articles 96, vers la fin; 127.)

ART. 126.—Marchands, gens de métier, et autres vendeurs de marchandise et denrée en détail, comme boulangers, pâtissiers, couturiers, selliers, bouchers, bourneliers, passementiers, maréchaux, rôtisseurs, cuisiniers, et autres semblables, ne peuvent faire actions après les six mois passés du jour de la première délivrance de leur dite marchandise ou denrée, sinon qu'il y eût arrêt de compte, sommation, ou interpellation judiciairement faite, cédule ou obligation. (Voyez l'article précédent, et le suivant.)

ART. 127.—Drapiers, merciers, épiciers, orfèvres, et autres marchands grossiers, maçons, charpentiers, couvreurs, barbiers, serviteurs, laboureurs, et autres mercenaires, ne peuvent faire action ni demande de leur marchandise, salaires et services, après un an passé, à compter du jour de la délivrance de leur marchandise ou vacation, s'il n'y a cédule, obligation, arrêt de compte par écrit ou interpellation judiciaire. (Voyez les deux articles précédens.)

ART. 128.—N'ont les taverniers et cabaretiers aucune action pour vin ou autres choses par eux vendues en détail par assiette en leurs maisons. (Voyez les articles 119, 175.)

TITRE VII.—SOMMAIRE.

Art. 129, Qui peut retraire. 130, Quant. 131, Mineurs. 132, Franc-aleu. 133, Premier vendeur. 134, Fruits. 135, Ensaisinement ou inféodation du seigneur. 136, Tenu du remboursement. 137, Vente rachetable. 138, Arrérages de la rente. 139, A quel héritier appartient l'héritage retiré. 140, Offre. 141, Lignager, comment préféré aux autres. 142, Héritiers du Vendeur. 143, Echange d'un propre. 144, N'a lieu sur les meubles. 145, S'il a lieu en échange. 146, Entretien de l'héritage. 147, Usufruit. 148, Loges achetées du Roi. 149, Baux. 150, Décret de propre. 151, Adjudgé sur curateur. 152, Non l'acquet. 153, Chose abandonnée. 154, Licitation. 155, Mi-denier. 156, Exception. 157, En partage. 158, Inhabile à succéder. 159, Retrait lignager sur le féodal.

DU RETRAIT LIGNAGER.

ART. 129.—Quand aucun a vendu et transporté son propre héritage, ou rente foncière, à personne étrange de son lignage du côté et ligne dont le dit propre héri-

proceeded from in succession, it is lawful for a relative of the said vendor of the side and line from which the said estate or *rente fonciere* has come and was left to him, to demand and have by *retrait lignager* that estate or rent within the year and day that the purchaser received the possession, if it is held *en censive*; or that he was received in fealty and homage, if it is held *en fief*; on re-imbursing the said purchaser the principal sum and legal expenses. (See Arts. 10, 96, 133, 136, 137, 142, 143, 145, 148, 149, 150, 151, 154, 155, 157, 159, 329; also the notes of 144.)

ART. 130.—The time of the *retrait lignager* does not begin until after the infeoffment or seizin made or taken by the purchaser; and the adjournment ought to be made, and the assignation served within the said year and day from the said infeoffment and seizin. (See Arts. 82, 132 and 135.)

ART. 131.—The year of *retrait* runs as well against majors as against minors, without hope of restitution. (See Arts. 354 and 356.)

ART. 132.—The year of *retrait* of an estate *propre* held *en Franc aleu*, commences the day the purchase has been published and registered at the nearest court of justice. (See Arts. 68, 130 and 131.)

ART. 133.—If any person purchases an estate *propre* from his relative of the side and line of which he is allied, and sells the said estate; such estate comes within *retrait*; in which case the first vendor can also redeem, as having not before put it out of the line. (See Arts. 129 and 242.)

ART. 134.—In cases of *retrait lignager* the *fruits* are due from the day of adjournment, and the offers of the price and costs due and to accrue. (See Arts. 138 and 285.)

ART. 135.—The seignior who acquires an estate, holding of him *en fief* or *censive*, is reputed to be infeoffed or invested from the day of his purchase, published in judgment at the nearest court of Justice Royal. (See Arts. 130 and 132.)

ART. 136.—The *retrayant* to whom the estate is adjudged by *retrait*, is held to pay and reimburse the purchaser of the money he has paid to the vendor for the purchase of the estate, or deposit the money on refusal of the said purchaser, he being duly called to see the said deposit made within four-and-twenty hours after the said *retrait* is adjudged by sentence; and that the purchaser has filed exhibits, the other party being called or present, or has affirmed the price of it is requested; and if he does not do it before the time expires, the *retrayant* loses his said *retrait*. (See Arts. 21 and 129.)

ART. 137.—The estate leased at a redeemable rent is subject to *retrait* within the year and day of the investiture or infeoffment, reimbursing him to whom the rent is due, or depositing the same on his refusal within twenty-four hours, the principal sum of the rent and arrears due since the day of the adjournment after the purchaser has filed his letters and affirmed the price as above stated; and in default of so doing, the *retrayant* loses his *retrait*. (See Arts. 36, 78, 83, and 129.)

ART. 138.—And with respect to arrears due within the year preceeding the

tage ou rente foncière, lui est venu et échu par succession, il est loisible au parent et lignager du dit vendeur du côté et ligne dont est venu et échu le dit héritage et rente foncière de demander et avoir par retrait lignager icelui héritage, ou rente dedans l'an et jour que l'acheteur en a été ensaisiné, s'il est tenu en censive ; ou qu'il a été reçu en foi et hommage, s'il est tenu en fief ; en remboursant le dit acheteur de son fort le dit acheteur principal et loyaux-coûts. (Voyez les articles 20, 96, vers la fin ; 133, 136, 137, 142, 143, 145, 148, 149, 150, 151, 154, 155, 157, 159, 329 ; voyez aussi les renvois de l'article 144.)

ART. 130.—Le tems de retrait lignager ne court sinon depuis l'inféodation ou saisine faits ou pris par l'acheteur, et doit l'ajournement être fait, et l'assignation écheoir dedans le dit an et jour de la dite inféodation ou saisine. (Voyez les articles 82, 132, 135.)

ART. 131.—L'an du retrait court tant contre le majeur que mineur, sans espérance de restitution. (Voyez vers le milieu des articles 354, 356.)

ART. 132.—L'an de retrait de propre héritage tenu en franc-aleu, ne court que du jour que l'acquisition a été publiée et insinuée en jugement au plus prochain siège Royal. (Voyez les articles 68, 130, 131.)

ART. 133.—Si aucune personne acquiert un héritage propre de son parent du côté et ligne dont il est parent, et il vend le dit héritage : tel héritage chet en retrait : Auquel cas peut aussi retraire le premier vendeur, comme ne l'ayant au précédent mis hors la ligne. (Voyez les articles 129, 242.)

ART. 134.—En matière de retrait lignager sont dus les fruits du jour de l'ajournement et offre de bourse, deniers, loyaux-coûts, et à parfaire. (Voyez les articles 48, au milieu ; 138, 285.)

ART. 135.—Le seigneur qui acquiert l'héritage tenu de lui en fief ou censive, est réputé être inféodé ou en-saisiné du jour de son acquisition publiée en jugement au plus prochain Siège Royal. (Voyez les articles 130, 132.)

ART. 136.—Le retrayant auquel l'héritage est adjugé par retrait, est tenu de payer et rebourser l'acheteur des deniers qu'il a payés au vendeur, pour l'achat du dit héritage, ou consigner les deniers au refus du dit acheteur, icelui duement appelé à voir faire la dite consignation, et ce dedans vingt-quatre heures après le dit retrait adjugé par sentence, et que l'acheteur aura mis ses lettres au greffe, partie présente ou appelée, et outre qu'il aura éffirmé le prix s'il en est requis : Et s'il ne le fait, le tems passé, tel retrayant est déchu du dit retrait. (Voyez l'article suivant, et les 21, 129.)

ART. 137.—L'héritage baillé à rente rachetable, est sujet à retrait dedans l'an et jour de la saisine ou inféodation, en remboursant celui à qui la rente est due, ou consignat en son refus dedans les vingt-quatre heures, le fort principal de la rente et arrérages échus depuis le jour de l'ajournement, après que l'acquéreur aura mis ses lettres au greffe, et à faute de ce faire, le retrayant est déchu du retrait. (Voyez l'article précédent, et les 78, 83, 129.)

ART. 138.—Et quant aux arrérages échus dedans l'an précédent l'ajournement,

adjournment, the purchaser can put them in the costs on giving up the *fruits* which he has gathered within the said year. (See Art. 129 and 134.)

ART. 139.—The estate withdrawn by *retrait lignager* does so belong to the family, if the one who redeemed it dies, leaving an heir of the acquet, and an heir of the *propres*, such estate ought to belong to the heir of the *propres* of the line of which the said estate has come, and not to the heir of the said acquets, on giving up within the year and day of the decease of the heirs of the said acquets the price of the said estate. (See Art. 94, 155, 244, and 326.)

ART. 140.—When the *lignager* of a vendor of an estate has notified the purchaser of such estate to have it by *retrait*, he who wishes to have the estate by *retrait* must offer the purchase price and legal expences, due and to become due as well on the day of adjournment as on each day of the cause, until the contestation in the cause inclusively, and also appeal inclusively. And if he does not do it, he should be dismissed from his action of *retrait*. (See Art. 104, 129, and 136.)

ART. 141.—The relative of the line who is the first to institute the *retrait*, is to be preferred to all others, if he is the nearest relation of the vendor, although the redeemer does not descend of him from whom the estate comes. (See Art. 178, 314, 329.)

ART. 142.—The heirs of the vendor after his death can withdraw the estate, being a *propre*, sold by him, provided these be of the side and line. (See the preceding Art.; also, Arts. 129, 133, 230, and the middle of 329.)

ART. 143.—When any one has exchanged his *propre* estate for another, the estate received in exchange is *propre* or lineal property, of him that got it in exchange, and if he sells it, it is redeemable. (See Art. 53, 94, 139, and 145.)

ART. 144.—Things moveable are not subject to the right of redemption. (See Arts. 97, 129, 147, 152, 153, 150, and 158.)

ART. 145.—In exchange, if there is a sum of money given, exceeding the value of the half, the estate is subject to the rights of redemption in proportion to the sum given; but if the sum given is less than the half, the right of redemption does not take place. (See Art. 143.)

ART. 146.—During the year and a day of the redemption the purchaser can make no buildings or reparations, if they are not necessary; neither can he injure the estate; if he does, he is bound to repair the same. (See Art. 203.)

ART. 147.—If any one sells the *usufruct* of his lineal property to a stranger, the said *usufruct* is not redeemable. (See Art. 129, and 140.)

ART. 148.—Lodges, work-shops, halls, and public places, purchased of the king, and coming by successor, are subject to the right of redemption. (See the following Art. and Art. 129.)

ART. 149.—Leases for ninety-nine years or other long leases are subject to be redeemed. (See Art. 129, and 147.)

l'acheteur les peut mettre en loyaux-couts, en rendant par lui les fruits qu'il aurait perçus dedans le dit an. (Voyez les articles 129, 131.)

ART. 139.—L'héritage retiré par retrait lignager, est tellement affecté à la famille, que si le retrayant meurt délaissant un héritier des acquêts et un héritier des propres, tel héritage doit appartenir à l'héritier des propres de la lignée dont est venu et issu le dit héritage, et non à l'héritier des acquêts, en rendant toutefois dedans l'an et jour du décès aux héritiers des dits acquêts, le prix du dit héritage. (Voyez les articles 94, 155, 244, 326.)

ART. 140.—Quand le lignager d'un vendeur d'héritage a fait ajourner l'acheteur d'icelui héritage, pour l'avoir par retrait, il convient que tel qui veut avoir le dit héritage par retrait, offre bourse, deniers, loyaux-couts, et à parfaire, que à chacune journée de la cause principale, jusqu'à contestation en cause inclusive-ment. Et s'il ne le fait, il doit être débouté du dit retrait. (Voyez les articles 104, au commencement ; 129, 136, à la fin.

ART. 141.—Le parent et lignager qui premier fait ajourner en retrait, doit être préféré à tous autres, posé qu'ils soient plus prochains parens du vendeur, encore que le retrayant ne soit descendu de celui duquel vient le dit héritage. (Voyez les articles 178, 314, en la fin ; 329.)

ART. 142.—Les héritiers du vendeur après son trépas, peuvent retirer l'héritage propre par lui vendu, pourvu qu'ils soient du côté et ligne. (Voyez l'article précédent, et les 129, 133, 230, au milieu ; 329.

ART. 143.—Quand aucun a échangé son propre héritage à l'encontre d'un autre héritage, le dit héritage est propre de celui qui l'a eu par échange, et s'il le vend, il chet en retrait. (Voyez les articles 53, 64, vers la fin ; 139, 145.

ART. 144.—Choses mobilières ne chéent en retrait. (Voyez l'article 97, au milieu ; le 129, les renvois au-dessous d'icelui, et les 147, 152, 153, 156, et 158.

ART. 145.—En échange s'il y a soulte excédante la valeur de la moitié, l'héritage est sujet à retrait pour portion de la soulte : Mais si la soulte est moindre que la dite moitié, n'y a lieu au retrait. (Voyez l'article 143.)

ART. 146.—Durant l'an et jour du retrait, l'acheteur ne peut faire aucuns bâtimens ne réparations s'ils ne sont nécessaires, pareillement ne peut empirer l'héritage. Et s'il le fait, est tenu de le rétablir. (Voyez l'article 203.)

ART. 147.—Si aucun vend l'usufruit de son propre héritage à personne étrange, le dit usufruit ne chet en retrait. (Voyez les articles 129 et 149.

ART. 148.—Loges, boutiques, étaux, places publiques achetées du Roi, et venant à succession, sont sujettes à retrait. (Voyez l'article suivant, et le 129.

ART. 149.—Baux à quatre-ving dix-neuf ans, ou longues années, sont sujets à retrait. (Voyez l'article précédent, et les 129, 147.)

ART. 150.—A *propre* estate sold by *décret* on a judgment, falls in *retrait*.

ART. 151.—An estate *propre* adjudged by *décret* on a curator to a vacant succession or on the heir with the benefit of an inventory, is subject to *retrait*.

ART. 152.—*Retrait* has not place in the case of this article, but the estate *acquet* of a deceased person adjudged upon the curator to the property of the said deceased is not subject to *retrait*.

ART. 153.—The estate adjudged on a curator to a thing abandoned is not subject to *retrait*.

ART. 154.—Portion of an estate sold by licitation that cannot be leased by division is subject to *retrait*.

ART. 155.—When any estate *propre* is acquired during the marriage of the two conjuncts, one of whom is the relation of the line of the vendor of the side that the said estate belonged to the said vendor, such estate so sold does not fall within *retrait* during the said marriage; but after the decease of one of the said conjuncts the half of the said estate falls into *retrait* against him who is not of the line, or his heir; if they are not of the line of the vendor, of the side and line of which the said estate belongs to, the said vendor, within the year and day from the death of the first of the said conjuncts who died, supposing that there was *saisine* or infeoffment taken during the said marriage, on the *retrayant* returning and paying the half of the principal sum, expenses, and legal costs.

ART. 156.—When he who is not in the line has children who are in the line, there is not *retrait*.

ART. 157.—And if by division the estate is put out of the line, it is subject to *retrait* for the half, provided always that the *retrayant* has brought his action and made protest within the year of the decease of the one of the conjuncts who is related to him.

ART. 158.—He who is not qualified to succeed, as a bastard, cannot have the benefit of the lineal redemption.

ART. 159.—The *fief* coming of a *propre*, sold by the vassal and retained by the power of the *fief* by the *seigneur féodal*, can be redeemed by one of the relations of the line of the vendor, of the stock and line of which it proceeded, within the year and day that the said *fief* had been retained by the power of the *fief*, the said retention published in judgment at the nearest Court of Justice. (See Arts. 20, 22, 130, 132 and 135.)

ART. 150.—Propre héritage vendu par décret en jugement par criées et subhastations, chet en retrait. (Voyez l'article 83, au commencement ; 152.)

ART. 151.—Un héritage propre adjugé par décret sur un curateur aux biens vacans ou sur l'héritier par bénéfice d'inventaire, est sujet à retrait. (Voyez l'article précédent et les subéq. avec les commencemens des 34, 314.)

ART. 152.—Mais l'héritage d'acquêt d'un défunt adjugé sur le curateur aux biens du dit défunt, n'est sujet à retrait. (Voyez l'article précédent, et les 129, 150.)

ART. 153.—L'héritage adjugé sur un curateur à la chose abandonnée, n'est sujet à retrait. (Voyez les deux articles précédens ; le 79, vers le commencement ; les 101 et 102, au milieu ; 109, au commencement ; 110, vers la fin.)

ART. 154.—Portion d'héritage vendue par licitation qui ne se peut bailler par divis est sujette à retrait. (Voyez les articles 80, 157, au commencement.)

ART. 155.—Quand aucun héritage propre est acquis durant et constant le mariage de deux conjoints, dont l'un d'eux est parent lignager du dit vendeur, du côté dont le dit héritage appartenait au dit vendeur, tel héritage ainsi vendu ne git en retrait durant et constant le dit mariage : mais après le trépas de l'un des dits conjoints, la moitié du dit héritage git en retrait à l'encontre de celui qui n'est lignager ou ses hoirs, s'ils ne sont lignagers du dit vendeur, du côté et ligne dont le dit héritage appartenait à icelui vendeur, dedans l'an et jour du trépas du premier mourant des dits conjoints : supposé qu'il y eut saisine ou inféodation prise durant icelui mariage, en rendant et payant par le retrayant la moitié du sort principal, frais et loyaux-couts. (Voyez les articles 139, au milieu ; 232, 244.)

ART. 156.—Quand celui qui n'est en ligne a des enfans qui sont en ligne, retrait n'a lieu. (Voyez l'article précédent.)

ART. 157.—Et si par partage l'héritage sort hors la ligne, il est sujet à retrait pour moitié : pourvu toutefois que le retrayant ait intenté son action, et sur icelle protesté dedans l'an du décès de celui des deux conjoints qui lui est parent. (Voyez les articles 80, 154, 155.)

ART. 158.—Qui n'est habile à succéder, comme un bâtard, ne peut venir à retrait lignager. (Voyez l'article 337.)

ART. 159.—Le Fief venant de propre vendu par le Vassal, et retenu par puissance de Fief par le Seigneur Féodal, peut être retrait par l'un des parens et lignagers du vendeur de l'estoc et ligne dont il est procédé, dans l'an et jour que le dit Fief a été retenu par puissance de Fief, la dite retenue publiée en jugement au plus prochain siège Royal. (Voyez les articles 20, 22, 130, 132, 135.)

TITLE VIII.—SUMMARY.

Art. 160, Causes of seizures and attachments. 161, For house rent. 162, Under tenants. 163, Not followed. 164 and 165, Not followed. 166, Of a litigious debt. 167, Not followed. 168, On the property of widows and heirs. 169, On the property of the deceased. 170, Moveables cannot be mortgaged. 171, But may be followed in certain cases. 172, Time of sale. 173 and 174, Not followed. 175, Privilege of Inn-keepers. 176, Preference of the vendor of a moveable sold without term. 177, Sold with term. 178, First seizures. 179, Insolvency. 180, What is insolvency. 181, Pledge. 182, Deposit. 183, Confiscation.

ARRESTS, EXECUTIONS AND GAGERIES.

ART. 160.—We cannot proceed by attachment, execution or other proceedings on the property of others, nor by imprisonment without obligation, condemnation, *délit* or *quasi délit*, things privileged or what amounts to the same. (See Arts. 166, 167, 171, 173, 175 and 176.)

ART. 161.—It is lawful for a proprietor of any house by him leased for rent, to proceed by *gagerie* in the said house for the terms due by him for the house rent on the property being therein. (See Arts. 86, 163 and 171.)

ART. 162.—If there are under-tenants their property can be taken for the rent and charges of lease; but nevertheless, they shall be restored to them on paying the rent for the time of their occupation. (See Arts. 54 and 55.)

ARTS. 163, 164 and 165.—(Not followed.)

ART. 166.—It is not lawful to proceed by attachment, seizure, execution or imprisonment, in virtue of an obligation or sentence. If the thing or sum for which we wish to make the prosecution is not certain and liquidated in sums or species—and, notwithstanding if the species be subject to a valuation—we can execute and summon in order to set a value on the same. (See Arts. 160 and 169.)

ART. 167.—(Not followed.)

ART. 168.—Obligation passed by a husband, or sentence against him given after decease of the said husband, cannot be put in execution on the property of the widow nor the heirs of the said deceased before they declare themselves such, and to do this they must be called upon. (See the following Articles and 160.)

ART. 169.—Nevertheless, for the preservation of the rights of the creditors, the property of the deceased and of the *communauté* may be seized and attached, notice having been previously given to the widow and the heirs. (See the preceding Article, and Arts. 221 and 322.)

TITRE VIII.—SOMMAIRE.

Art. 160, Causes des exécutions et arrêts. 161, Pour le loyer de maison. 162, Sous-locataires. 163, 164, 165, Non suivis. 166, Dette litigieuse. 167, Non suivi. 168, Propriétés de la veuve et ses héritiers. 169, Propriétés du défunt. 170, Meubles ne peuvent être hypothéqués. 171, Mais peuvent être suivis dans certains cas. 172, Temps de la vente. 173 et 174, Non suivis. 175, Privilège des hôteliers. 176, Préférence du vendeur d'un meuble vendu sans terme. 177, Vendu avec terme. 178, Premières saisies. 179, Insolvabilité. 180, Ce que c'est. 181, Gage. 182, Dépôt. 183, Confiscation.

ARRETS, EXECUTIONS ET GAGERIES.

ART. 160.—On ne peut procéder par voie d'arrêts, exécutions ou autre exploits, sur les biens d'autrui, ne par emprisonnement, sans obligation, condamnation, délit ou quasi délit, chose privilégiée, ou qui le vaille. (Voyez les articles 166, 167, 171, 173, 175, 176.)

ART. 161.—Il est loisible à un propriétaire d'aucune maison par lui baillée à titre de loyer, faire procéder par voie de gagerie en la dite maison, pour les termes à lui dus pour le louage, sur les biens étant en icelle. (Voyez les articles 86, au milieu; 163, sur la fin; et 171.)

ART. 162.—S'il y a des sous-locatifs, peuvent être pris leurs biens pour le dit loyer et charges de bail, et néanmoins leur seront rendus en payant le loyer pour leur occupation. (Voyez les articles 54, 55.)

ARTS. 163, 164, 165.—(Non suivis.)

ART. 166.—On n'est recevable à procéder par voie d'arrêt, saisie, exécution ou emprisonnement en vertu d'obligation ou sentence, si la chose ou somme pour laquelle on veut faire le dit exploit, n'est certaine et liquide en somme ou espèce. Et néanmoins si l'espèce est sujette à appréciation, on peut exécuter et ajourner afin d'apprécier. (Voyez les articles 160, 169.)

ART. 167.—(Non suivi.)

ART. 168.—Obligation passée par le mari, ou sentence contre lui donnée, après le trépas du dit mari, ne sont exécutoires sur les biens de la veuve, ni des héritiers du dit défunt, avant que tels soient déclarés. Et pour ce faire les faut appeler. (Voyez l'article suivant, et le 160.)

ART. 169.—Néanmoins pour la conservation du dû des créanciers, peuvent être les biens du défunt et de la communauté saisis et arrêtés, commandement préalablement fait à la veuve et héritiers. (Voyez l'article précédent et les 221, 332.)

ART. 170.—Moveables cannot be mortgaged when they are out of the possession of the debtor. (See Arts. 176, 177, 178, 181 and 182.)

ART. 171.—At all times the proprietors of houses situate in the town and suburbs and farms of the fields, may follow up the property of their tenant or farmers, although they be carried away, to be first paid their rents, and stop them until they are sold and delivered, by authority of justice. (See the following Article, and Arts. 161 and 176.)

ART. 172.—The persons suing out execution are held to sell the property within two months after oppositions are finished. (See Art. 160.)

ART. 173 and 174.—(Not followed.)

ART. 175.—Expenses of sums delivered by landlords to travellers, or to their horses, are privileged, and are to be preferred before any other on the property and horses, and the inn-keepers can retain them until payment; and if any other creditor would wish to take them away, the inn-keeper has just cause to oppose it. (See Arts. 128, 161 and 171.)

ART. 176.—He who sells anything moveable without day of payment being specified, and without term expecting to be paid immediately, the thing can be followed up into whatever place it is taken, to be paid the price for which he sold it. (See the following Articles, and Arts. 170 and 171.) *Art. 176. 177. 178.*

ART. 177.—And notwithstanding, if he has given term, if the thing is seized on the debtor for another creditor, he can stop the sale, and has a preference upon the thing to all other creditors. (See the preceding and following Articles.) *177. 178.*

ART. 178.—The creditor who makes the first attachment and seizes validly or takes by execution any moveables belonging to his debtor, is to be first paid. (See the following Article, and Arts. 108, 141 and 170.)

ART. 179.—But in case of insolvency each creditor takes his dividend in the pound on the moveable property of the debtor, and there is no preference or privilege for any cause whatever, although one of the creditors had made the first seizure. (See the preceding and following Articles, and Arts. 95, 181 and 182.)

ART. 180.—The case of insolvency is when the property of a debtor, as well moveable as immoveable, is not sufficient for the apparent creditors; and if to prevent the distribution there arises a contest between creditors appearing on the sufficiency or insufficiency of the said property, the first in diligence who takes the monies arising from the moveables by them seized, is to give security to return the same to be put in distribution in case the said property is not sufficient.

ART. 181.—And the distribution does not take place when the creditor is found possessed of the moveables which had been delivered him as security. (See Art. 179.)

ART. 182.—And likewise the distribution does not take place in case of deposit, if the deposit be in the same state. (See the three preceding Articles.)

ART. 183.—He who forfeits his life confiscates his property.

ART. 170.—Meubles n'ont point de suite par hypothèque, quand ils sont hors de la possession du débiteur. (Voyez l'article suivant ; et les 176, 177, 178, 181, 182.)

ART. 171.—Toutefois les propriétaires des maisons situées des Villes et Faubourgs et fermes des champs, peuvent suivre les biens de leurs locataires ou fermiers exécutés, encore qu'ils soient transportés, pour être premiers payés de leurs loyers ou maison, iceux arrêter, jusqu'à ce qu'ils soient vendus et délivrés par autorité de justice. (Voyez l'article 161 et 176.)

ART. 172.—Les exécuteurs sont tenus de faire vendre les biens dedans deux mois après les oppositions jugées ou cessées. (Voyez l'article 160.)

ART. 173 et 174.—(Non suivi.)

ART. 175.—Dépens d'hôtelage, livrés par hôtes à pèlerins, ou à leurs chevaux, sont privilégiés, et viennent à préférer devant toute autre, sur les biens et chevaux hôtelés, et les peut l'hôtelier retenir jusqu'à paiement : et si aucun autre créancier les voulait enlever, l'hôtelier a juste cause de se opposer. (Voyez les articles 128, 161, 171.)

ART. 176.—Qui vend aucune chose mobilière sans jour et sans terme, espérant être payé promptement, il peut sa chose poursuivre en quelque lieu qu'elle soit transportée, pour être payé du prix qu'il l'a vendue. (Voyez l'article suivant ; et les 170, 171.)

ART. 177.—Et néanmoins encore qu'il eut donné terme, si la chose se trouve saisie sur le débiteur par autre créancier, il peut empêcher la vente ; et est préféré sur la chose aux autres créanciers. (Voyez les articles précédent et suivant.)

ART. 178.—Le créancier qui fait premier arrêter et saisir valablement, ou prendre par exécution aucuns meubles appartenans à son débiteur, doit être le premier payé. (Voyez l'article suivant ; et les 108, 141, 170.)

ART. 179.—Toutefois en cas de déconfiture, chacun créancier vient à contribution au sol la livre, sur les biens meubles du débiteur. Et n'y a point de préférence ou prérogative pour quelque cause que ce soit : encore qu'aucun des créanciers eut fait premier saisir. (Voyez l'article précédent ; et le suivant avec les 95, en la fin ; 181 et 182.)

ART. 180.—Le cas de la déconfiture est, quand les biens du débiteur, tant meubles qu'immeubles, ne suffisent aux créanciers apparens : et si pour empêcher la contribution se meut différend entre les créanciers apparens sur la suffisance ou insuffisance des dits biens, les premiers en diligence qui prennent les deniers des meubles par eux arrêtés, doivent bailler caution de les rapporter, pour être mis en contribution, au cas que les dits biens ne suffisent. (Voyez l'article précédent et les deux suivans ; et le 95, en la fin.)

ART. 181.—Et n'a lieu la contribution quand le créancier se trouve saisi du meuble qui lui a été baillé en gage. (Voyez l'article 179.)

ART. 182.—Aussi n'a lieu la contribution en matière de dépôt, si le dépôt se trouve en nature. (Voyez les trois articles précédens.)

ART. 183.—Qui confisque les biens, il confisque le corps.

TITLE IX.—SUMMARY.

Art. 184, Servitudes and report of visits, jurors or experts. 185, Report. 186, How services are acquired. 187, Consequence of the property of the soil. 188, Counter wall for a stable. 189, For a chimney and hearth. 190, For forges. 191, For privies. 192, For ploughed ground. 193, Not followed. 194, Building against a wall not in common. 195, Raising a partition mitoyen wall. 196, Building on a fence wall. 197, Charges to be paid to the neighbour. 198, Building on a partition wall. 199, Openings in common walls. 200, In walls which are not common. 201, What is meant by fer maille. 202, Front and side views. 203, Duty of masons demolishing walls. 204, Wall to be pierced and demolished. 205, Contribution for rebuilding a partition wall. 206, Beams and rafters. 207, Of the placing of beams in partition walls. 208, How beams are to be placed in a partition wall. 209, Contribution for a fence wall. 210, Out of towns and suburbs. 211, Fence walls. 212, How a right to a wall can be obtained. 213, Idem of old common ditches. 214, Mark of the partition wall. 215, Erection of servitudes. 216, Destination of the father of a family. 217, At what distance from a partition wall must be made ditches. 218 and 219, Not followed.

SERVITUDES AND REPORTS OF JURORS.

183-184 185-186 187-188 189-190 191-192 193-194 195-196 197-198 199-200 201-202 203-204 205-206 207-208 209-210 211-212 213-214 215-216 217-218 219-220
ART. 184.—In all cases subject to visitation the parties ought to agree upon *jurés* or experts, and persons who have a knowledge thereof, who are sworn before the judge; and the report ought to pay such regard to it as is reasonable, without demanding amendment. The judge can, nevertheless, order another and more ample visitation to be made if it is necessary; and where the parties do not agree upon any body, the judge may name one. (See the following Article.)

ART. 185.—And the said *jurés* and experts, skilful persons, are held to make and take down in writing, and sign the minute report at the place before leaving it, and put the said minute, at the time, into the hands of the clerk who assists them, who must, within twenty-four hours afterwards, deliver the report to the parties who requested it. (See the preceding Article.)

ART. 186.—Right of service is not acquired by any long enjoyment whatever without a title, even of an hundred years; but the liberty against a title of service can be acquired by thirty years, between persons of full age and not privileged. (See Arts. 12, 71, 124, 215 and 216.)

ART. 187.—Whoever has the ground called the story, even with the ground of any estate, he can and ought to have all that is above and below his ground—and can build above and below, and make wells, pits, and other things lawful if there is no title to the contrary.

TITRE IX.—SOMMAIRE.

184, *Des servitudes et rapports de Jurés.* 185, *Rapport.* 186, *Comment servitudes sont acquises.* 187, *Conséquence de la propriété du sol.* 188, *Contre-mur pour étable.* 189, *Pour une cheminée ouâtre.* 190, *Pour forges.* 191, *Pour aisance de privés.* 192, *Pour terre labourée.* 193, *(non suivi.)* 194, *Bâtissant contre un mur non mitoyen.* 195, *Si on peut hausser un mur mitoyen.* 196, *Bâtissant un mur de clôture.* 197, *Charges à payer au voisin.* 198, *Bâtissant sur un mur mitoyen.* 199, *Ouvertures dans un mur mitoyen.* 200, *Dans un mur non mitoyen.* 201, *Ce qu'on entend par fer maillé.* 202, *Fues droites et de côté.* 203, *Devoirs des maçons demolissant un mur.* 204, *Mur à percer et démolir.* 205, *Contribution pour rebâtir un mur mitoyen.* 206, *Poutres et solives.* 207, *Pour asseoir poutres ou mur mitoyen.* 208, *Comment poutres doivent être placées.* 209, *Contribution à murs de clôture.* 210, *Hors de la ville et des faubourgs.* 211, *Murs de clôture.* 212, *Comment on peut obtenir droit à un mur.* 213, *Des anciens fossés communs.* 214, *Marques du mur mitoyen.* 215, *Constitution de servitudes.* 216, *Destination de père de famille.* 217, *A quelle distance du mur doivent être fait fossés.* 218 et 219, *(non suivis.)*

DES SERVITUDES ET RAPPORT DE JURÉS.

ART. 184.—En toutes matières sujettes à visitation, les parties doivent convenir en jugement de Jurés ou Experts, et gens à ce connaissans, qui font le serment pardevant le Juge. Et doit être le rapport apporté en justice, pour en plaidant ou en jugeant le procès, y avoir tel égard que de raison, sans qu'on puisse demander amendement. Peut néanmoins le Juge ordonner autre ou plus ample visitation être faite, s'il y échet. Et où les parties ne conviennent de personnes, le Juge en nomme d'office. (Voyez l'article suivant.)

ART. 185.—Et sont tenus les dits Juges ou Experts, et gens connaissans, faire et rédiger par écrit, et signer la minute du rapport sur le lieu, et paravant qu'en partir, et mettre à l'instant la dite minute es mains du Clerc qui les assiste: lequel est tenu dedans les vingt-quatre heures après, délivrer le dit rapport aux parties, qui l'en requierent. (Voyez l'article précédent.)

ART. 186.—Droit de servitude ne s'acquiert par longue jouissance quelle qu'elle soit, sans titre; encore que l'on en ait joui par cent ans: mais la liberté se peut réacquérir contre le titre de servitude par 30 ans, entre âgés, et non privilégiés. (Voyez les articles 12, 71, 124, 215, 216.)

ART. 187.—Quiconque a le sol, appelé l'étage du rez-de-chaussée d'aucun héritage, il peut et doit avoir le dessus et le dessous de son sol, et peut édifier par dessus et par dessous, et y faire toutes autres choses licites, s'il n'y a titre au contraire.

ART. 188.—He who builds a stable against a partition *mitoyen* wall ought to make a *contremur* eight inches thick and as high as the manger.—(See the four following Articles.)

ART. 189.—He who wishes to make chimnies and hearths against the partition wall, ought to make partitions of pieces of tiles or other things sufficient of half a foot in thickness. (See the following Article.)

ART. 190.—He who wishes to make a forge, oven or furnace against a partition wall, ought to leave an empty space of half a foot between the two walls of the oven or forge, and the said wall ought to be a foot thick. (See the preceding Article.)

ART. 191.—Whoever wishes to make privies or wells against a partition wall ought to make a *contremur* one foot thick. And when there is one at each side, wells on one side and privies on the other, four feet of wall is sufficient between the two, including the thickness of the walls of one part, and the other, but between two wells three feet at least is sufficient. (See Art. 227.)

ART. 192.—He who has an open place, garden or other vacant spot which joins directly with another wall or partition wall, and he wishes to cultivate and clear it, he is bound to make the partition wall of half a foot thick, and if there is land heaped up,—he is bound to make the *contremur* one foot. (See Arts. 188, and 211.)

ART. 193.—(Not followed.)

ART. 194.—If any person wishes to build against a wall which is not a partition wall he may do it on paying the half as well of the said wall as the foundation of it, to the height he wishes to build, which he is bound to pay before he pulls down or builds anything, in the estimation of which wall is comprised the value of the land on which the said wall is founded and situate in case he who made the wall, has built it all upon his own estate. (See the following Arts. also Arts. 198, 203, 204, 205, 209, and 211.)

ART. 195.—A neighbour has a right to heighten at his expense the partition wall between him and his neighbour as high as he thinks proper without the consent of his neighbour, if there is no title to the contrary, on paying the charges, provided that the wall is sufficiently strong to support the raising; and if it is not so, he who wishes to raise the same must strengthen it, and ought to take the thickness from his side. (See the preceding Art. and the three following.)

ART. 196.—If the wall of an enclosure is good and durable, he who wishes to build thereon and demolish the old wall, the same not being sufficient to support his building, is bound to pay all the expenses, and in so doing does not pay any charges; but if he makes use of the old wall, he must pay the charges. (See the two following Arts. and Arts. 204, 209, 211.)

ART. 197.—The charges to be paid and reimbursed by him who makes use of and builds upon or against the partition wall, are one fathom for every six that is built above ten feet. (See the two preceding Arts. also Arts. 204, 209, 211.)

ART. 188.—Qui fait étable contre un mur mitoyen, il doit faire contre-mur de huit pouces d'épaisseur de hauteur jusqu'au rez de la mangeoire. (Voyez les quatre articles suivans.)

ART. 189.—Qui veut faire cheminées et âtres contre le mur mitoyen, doit faire contre-mur de thuilots, ou autre chose suffisante de demi-pied d'épaisseur. (Voyez l'article suivant.)

ART. 190.—Qui veut faire forge, four et fourneau contre le mur mitoyen, doit laisser demi pied de vuide et intervalle entre deux du mur du four ou forge : et doit faire le dit mur d'un pied d'épaisseur. (Voyez l'article précédent.)

ART. 191.—Qui veut aisance de privés, ou puits contre un mur mitoyen, il doit faire contre-mur d'un pied d'épaisseur. Et où il y a de chacun côté puits, ou bien puits d'un côté et aisance de l'autre, suffit qu'il y ait quatre pieds de maçonnerie d'épaisseur entre deux, comprenant les épaisseurs des murs d'une part et d'autre. Mais entre deux puits suffisent trois pieds pour le moins. (Voyez l'article 217.)

ART. 192.—Celui qui a place, jardin, ou autre lieu vuide qui joint immédiatement au mur d'autrui, où à mur mitoyen, et il veut faire labourer et fumer, il est tenu de faire contre-mur de demi-pied d'épaisseur, et s'il a terres jectisses, il est tenu faire contre-mur d'un pied d'épaisseur. (Voyez l'article 188 et 211.)

ART. 193.—(Nul.)

ART. 194.—Si aucun veut bâtir contre un mur non mitoyen, faire le peut en payant moitié tant du dit mur que fondation d'icelui, jusqu'à son héberge. Ce qu'il est tenu payer paravant que rien démolir ni bâtir. En l'estimation duquel mur est comprise la valeur de la terre sur laquelle est le dit mur fondé et assis, au cas que celui qui a fait le mur, l'ait tout pris sur son héritage. (Voyez les articles suivans ; et les 198, 203, 204, 205, 209, 211.)

ART. 195.—Il est loisible à un voisin hausser à ses dépens le mur mitoyen d'entre lui et son voisin, si haut que bon lui semble, sans le consentement de son dit voisin, s'il n'y a titre au contraire, en payant les charges : pourvu toutefois, que le mur soit suffisant pour porter le rehaussement, et s'il n'est suffisant, faut que celui qui veut rehausser, le fasse fortifier, et se doit prendre l'épaisseur de son côté. (Voyez l'article précédent, et les trois suivans.)

ART. 196.—Si le mur est bon pour clôture et de durée, celui qui veut bâtir dessus, et démolir le dit mur ancien, pour n'être suffisant pour porter son bâtiment, est tenu de payer entièrement tous les frais, et en ce faisant ne payera aucunes charges : mais s'il s'aide du mur ancien, payera les charges. (Voyez l'article suivant ; et les 204, 209, 211.)

ART. 197.—Les charges sont de payer et rembourser par celui qui se loge et héberge sur et contre le mur mitoyen, de six toises l'une de ce qui sera bâti au-dessus de dix pieds. (Voyez les deux articles précédens ; et les 209, 211.)

ART. 198.—It is lawful for a neighbour to make use of and build upon a common and partition wall between him and his neighbour as high as he thinks proper on paying half of the said wall, if there is no title to the contrary. (See Arts. 194, 195, 196, and 204.)

ART. 199.—In the partition wall one of the neighbours cannot, without the consent and agreement of the other, cause to be made any windows or holes for light whatever, either dormant windows or any other kind. (See the two following Arts. and 211.)

ART. 200.—If any person has a wall belonging to himself solely, adjoining the estate of another, he can have windows and lights in the said wall according to the Custom of Paris, that is to say of nine feet high above the surface of the earth in the first story, and with regard to the other stories of seven feet above the surface, the whole, a *fer maille* and dormant glass. (See the two preceding and the two following Arts.)

ART. 201.—*Fer maille* is a grated window wherein the holes cannot be larger than four inches and dormant glass is that which is fastened in plaster and cannot be opened. (See the two preceding Arts.)

ART. 202.—No person can make front lights upon his neighbours nor upon property belonging to him, if there is not a space of six feet between the said lights; and cannot have side lights if there is not a space of two feet. (See Arts. 199 and 200.)

ART. 203.—Masons cannot touch or cause to be touched a partition wall, to demolish, pierce it or rebuild it, without calling on the neighbours who are interested, by simple notice solely, and that at the risk of all costs, damages, interests and the rebuilding of the said wall. (See the preceding Arts. and Arts. 108, 145, 195, 198 and 205.)

ART. 204.—It is lawful for a neighbour to pierce or cause to be pierced and demolished a common and partition wall between him and his neighbour, to make use of and build thereon, on rebuilding it at his own expense, if there is no title to the contrary, previously notifying his neighbour, and he is held to do so immediately and without discontinuing the said building. (See the preceding Art. and 208.)

ART. 205.—It is likewise lawful for a neighbour to compel or cause to be constrained by justice, his neighbour to make or cause to be made the wall and common building when injured between him and his said neighbour, on paying his part, each one according to his share in the wall, and for such part and portion that the said parties have and may have, in the said wall, and partition building. (See Arts. 195, 196, and 206.)

ART. 206.—It is not lawful for a neighbour to make or cause to be put and placed the beams and rafters of his house in the wall between him and his neighbour, if it is not a partition wall. (See the two preceding Arts.)

ART. 198.—Il est loisible à un voisin se loger ou édifier au mur commun et mitoyen d'entre lui et son voisin, si haut que bon lui semble, en payant la moitié du dit mur mitoyen, s'il n'y a titre au contraire. (Voyez les articles 194, 195, 196, 204.)

ART. 199.—En mur mitoyen ne peut l'un des voisins, sans l'accord et consentement de l'autre, faire faire fenêtres ou trous pour vue, en quelque manière que ce soit, à verre dormant ni autrement. (Voyez les deux articles suivans ; et le 211.)

ART. 200.—Toutefois si aucun a mur à lui seul appartenant, joignant sans moyen à l'héritage d'autrui, il peut en icelui mur avoir fenêtres, lumières ou vues aux us et coutumes de Paris : c'est à savoir de neuf pieds de haut au-dessus du rez de chaussée et de terre, quant au premier étage : et quant aux autres étages, de sept pieds au-dessus du rez-de-chaussée : Le tout à fer maillé et verre dormant. (Voyez l'article précédent, et les deux suivans.)

ART. 201.—Fer maillé est treillis dont les trous ne peuvent être que de quatre pouces en tout sens ; et verre dormant, est verre attaché, scellé en plâtre qu'on ne peut ouvrir. (Voyez les deux articles précédens.)

ART. 202.—Aucun ne peut faire vues droites sur son voisin, ni sur places à lui appartenantes, s'il n'y a six pieds de distance entre la dite vue et l'héritage du voisin : et ne peut avoir lées de côté, s'il n'y a deux pieds de distance. (Voyez l'article 199 et 200.)

ART. 203.—Les Maçons ne peuvent toucher à un mur mitoyen pour le démolir, percer et réédifier, sans y appeler les voisins qui y ont intérêt, par une simple signification seulement. Et ce à peine de tous dépens, dommages et intérêts, et rétablissement du dit mur. (Voyez l'article suivant ; et les 108, au milieu, 146, 195, 198, 205.)

ART. 204.—Il est loisible à un voisin, percer ou faire percer et démolir le mur commun et mitoyen d'entre lui et son voisin pour se loger et édifier, en le rétablissant duement à ses dépens, s'il n'y a titre au contraire : en le dénonçant toutefois au préalable à son voisin. Et est tenu faire incontinent et sans discontinuation le dit établissement. (Voyez l'article précédent et le 208.)

ART. 205.—Il est aussi loisible à un voisin contraindre ou faire contraindre par justice son autre voisin, à faire ou à faire refaire le mur et édifice commun pendant et corrompu entre lui et son dit voisin, et d'en payer sa part chacun selon son héberge, et pour telle part et portion que les dites parties ont et peuvent avoir au dit mur et édifice mitoyen. (Voyez les articles 195, 196, 206.)

ART. 206.—N'est loisible à un voisin de mettre ou faire mettre et loger les poutres et solives de sa maison, dans le mur d'entre lui et son dit voisin, si le dit mur n'est mitoyen. (Voyez les deux articles suivans.)

ART. 207.—It is not lawful for a neighbour to put or cause to be put or set the beams of his house in the partition wall between him and his neighbour, without having made and placed piers, props or chains and corbils sufficient of cut stone to support the said beams in rebuilding the said wall. But for walls for fields, it will do to put something sufficient. (See the preceding and the following Art.)

ART. 208.—Nobody can pierce the partition wall between him and his neighbour, in order to put and place the beams of his house therein farther than half the thickness of the said wall, and farther than the middle, on rebuilding the said wall, and by placing or causing to be placed piers, chains and corbils, as above mentioned. (See the two preceding Arts.)

ART. 209.—Every person can oblige his neighbour living in the town and suburbs of the prevostship and viscounty of Paris to contribute to make an inclosure forming a separation of their houses, yards and gardens, situate in the said town and suburbs, as high as ten feet from the ground including the coping. (See the following Arts. and 196, 205, and 211.)

ART. 210.—Without the said town and suburbs a neighbour cannot oblige his neighbour to make a new wall separating the yards and gardens but can oblige him to keep in repair the old wall according to the ancient height of the said walls or give up the right to the wall and the land on which it is situate. (See the preceding and the two following Arts.)

ART. 211.—All walls separating yards and gardens are reputed partition walls, if there is no title to the contrary, and he who wishes to build a new wall or repair the old one can call his neighbour to contribute to the building or repairing of it, unless the latter should prefer to give title to the whole of the said wall. (See Arts. 194, 195, 198, 203, 204, 209, 264.)

ART. 212.—And notwithstanding in the case of the two preceding articles, the said neighbour is entitled, whenever it pleases him, to demand half of the said erected wall and its foundation to re-enter into his first right, on reimbursing half the said expense of the said wall and its foundation. (See the two preceding Arts.)

ART. 213.—The like is observed with respect to the repairing, cleaning and maintenance of old common and separate ditches. (See the preceding Art. and 210.)

ART. 214.—Ledges ought to be made with stone in order to know whether it is a partition wall or belongs to one alone. (See Art. 211.)

ART. 215.—When the father of a family gives up the possession of his house, he ought specially to declare what services he retains on the estate which he gives up, or what he constitutes on his own, and ought specially to name them, as well the situation, extent, height, measure, as kind of service, otherwise all general constitutions of services without being specified as above are not valid. (See the following Art. and 186.)

ART. 207.—Il n'est aussi loisible à un voisin de mettre ou faire mettre, et asseoir les poutres de sa maison dedans le mur mitoyen d'entre lui et son voisin, sans y faire faire et mettre jambes, parpaignes ou chaînes et corbeaux suffisans de pierre de taillé, pour porter les dites poutres, en rétablissant le dit mur : Toutefois pour les murs des champs, suffit y mettre matière suffisante. (Voyez l'article précédent et le suivant.)

ART. 208.—Aucun ne peut percer le mur mitoyen d'entre lui et son voisin, pour y mettre et loger les poutres de sa maison, que jusqu'à l'épaisseur de la moitié du dit mur, et au point du milieu en rétablissant le dit mur, et en mettant ou faisant mettre jambes, chaînes, et corbeaux, comme dessus. (Voyez les deux articles précédens.)

ART. 209.—Chacun peut contraindre son voisin es Villes et Faubourgs de la Prévôté et Vicomté de Paris, à contribuer pour faire faire clôture faisant séparations de leurs maisons, cour, et jardins assis esdites Villes et Fauxbourgs, jusqu'à la hauteur de dix pieds de haut du rez de chaussée compris le chaperon. (Voyez l'article suivant, et les 196, 205, 211.

ART. 210.—Hors les dites Villes, et Faubourgs, on ne peut contraindre son voisin à faire mur de nouvel séparant les cours et jardins : mais bien le peut-on contraindre à l'entretennement et réfection nécessaire des murs anciens selon l'ancienne hauteur des dits murs, si mieux le voisin n'aime quitter le droit de mur et la terre sur laquelle il est assis. (Voyez l'article précédent et les deux articles suivans.

ART. 211.—Tous murs séparant cours et jardins, sont réputés mitoyens, s'il n'y a titre au contraire. Et celui qui veut faire bâtir nouvel mur ou refaire l'ancien corrompu, peut faire appeller son voisin pour contribuer au bâtiment ou réfection du dit mur, ou bien lui accorder lettres que le dit mur soit tout sien. (Voyez les articles 194, 195, 198, 203, 204, 205, 209, 214.

ART. 212.—Et néanmoins es cas des deux précédens articles, est le dit voisin reçu, quand bon lui semble, à demander moitié du dit mur bâti et fonds d'icelui. ou à rentrer en son premier droit en remboursant moitié du dit mur et fonds d'icelui. (Voyez les deux articles précédens.)

ART. 213.—Le semblable est gardé pour la réfection, vuidanges et entretennemens des anciens fossés communs et mitoyens. (Voyez l'article précédent et le 210.)

ART. 214.—Filets doivent être faits accompagnés de pierres, pour connaître que le mur est mitoyen, ou à un seul. (Voyez l'article 211.)

ART. 215.—Quand un père de famille met hors ses mains partie de sa maison, il doit spécialement déclarer quelles servitudes il retient sur l'héritage qu'il met hors ses mains, ou quelles il constitue sur le sien : et les faut nommément et spécialement déclarer, tant pour l'endroit, grandeur, hauteur, mesure, qu'espèce de servitude. Autrement toutes constitutions générales de servitudes sans les déclarer comme dessus, ne valent. (Voyez l'article suivant, et le 186.)

ART. 216.—Destination of the father of a family is equivalent to a title, when it is or has been written, and not otherwise. (See the preceding Art. and 93 and 186.)

ART. 217.—Nobody can have ditches of water or sinks, if there is not six feet full distance in every direction from the walls belonging to the neighbour's or partition wall. (See Arts. 191, 213.)

ART. 218 and 219.—(Not followed.)

TITLE X.—SUMMARY.

Art. 220, Matrimonial community. 221, Moveable debts of the community. 222, How conjuncts are liberated from them. 223, Married women cannot sell. 224, Cannot plead. 225, Power of the husband. 226, Restrictions. 227, Leases. 228, How far she can be bound. 229, Division of the community. 230, Usufruct the property of the heirs of the deceased. 231, Fruits of the lineal property. 232, Alienation of the lineal property. 233, Moveable and possessory actions of the wife. 234, If a married woman can bind herself. 235, How a wife is reputed a public merchant. 236, Public merchant. 237, How a widow can renounce the community. 238, Not followed. 239, Married Minors. 240, Continuation of community for want of making an Inventory. 241, Must be closed within three months. 242, By what proportions the community is continued. 243, If any of the children die during the continuation. 244, Rents paid during the community. 245, Consequence. 246, In case of gift to one of the conjuncts.

COMMUNITY OF PROPERTY.

ART. 220.—Men and women joined by marriage have an equal share in the moveable property and conquests immoveable acquired during the said marriage and the community commences from the day of the espousal and nuptial blessing. (See Arts. 229, 237, 239, 244, 246, 282.)

ART. 221 —On account of which community the husband is personally bound for the moveable debts due by his wife, and can be legally prosecuted for the same during their marriage and likewise the wife is bound after the decease of her husband, to pay the half of the moveable debts made and contracted by the said husband as well during the marriage as before it; and that, to the amount of the community as will be hereafter mentioned. (See Arts. 228, 237, 244, and 245.)

ART. 222.—Although it should be agreed between two conjuncts that they will separately pay their debts contracted before their marriage, yet, notwithstanding, they are bound if there is no inventory made before, in which case they are liberated on representing the inventory or the estimation of it. (See Arts. 228, 239, and 241.)

ART. 216.—Destination de père de famille vaut titre quand elle est, ou a été par écrit, et non autrement. (Voyez l'article précédent, et les 93, 186.)

ART. 217.—Nul ne peut faire fossés à eaux ou cloques, s'il n'y a six pieds de distance en tous sens des murs appartenant au voisin, ou mitoyens. (Voyez les articles 191, 213.)

ARTS. 218, 219.—(Nuls.)

TITRE X.—SOMMAIRE.

Art. 220, Communauté par mariage. 221, Dettes mobilières de la communauté. 222, Comment les conjoints en sont libérés. 223, Femme mariée ne peut vendre. 224, Ne peut ester en justice. 225, Pouvoir du mari. 226, Restrictions. 227, Baux. 228, Jusqu'à quel point il peut être tenu. 229, Division de la communauté. 230, Usufruit, la propriété des héritiers du défunt. 231, Fruits de la propriété de ligne. 232, Aliénation de la propriété de ligne. 233, Actions mobilières et possessoires de la femme. 234, Si une femme mariée peut obliger. 235, Comment une femme est réputée marchande publique. 236, Marchande publique. 237, Comment une veuve peut renoncer à la communauté. 238, (Nul.) 239, Mineurs mariés. 240, Continuation de la communauté par défaut d'inventaire. 241, Doit être clos dans les trois mois. 242, En quelles proportions la communauté est continuée. 243, Si aucun des enfans meure durant la continuation. 244, Rentes payées durant la communauté. 245, Conséquence. 146, Au cas de donation à l'un des conjoints.

COMMUNAUTÉ DE BIENS.

ART. 220.—Homme et femme conjoints ensemble par mariage, sont communs en biens meubles et conquêts immeubles, faits durant et constant le dit mariage. Et commence la communauté au jour des épousailles et bénédiction nuptiale. (Voyez les articles 229, 237, 239, 244, 246, 282.)

ART. 221.—A cause de laquelle communauté, le mari est tenu personnellement payer les dettes mobilières dues à cause de sa femme, et en peut être valablement poursuivi durant leur mariage. Et aussi la femme est tenue, après le trépas de son mari, payer la moitié des dettes mobilières faites et accrues par le dit mari, tant durant le dit mariage qu'auparavant icelui. Et ce jusqu'à la concurrence de la communauté, comme il sera dit ci-après. (Voyez l'article suivant, et les 228, 237, 244, 245.)

ART. 222.—Combien qu'il soit convenu entre deux conjoints, qu'ils payeront séparément leurs dettes auparavant leur mariage : ce néanmoins ils en sont tenus, s'il n'y a inventaire préalablement fait : auquel cas ils demeurent quittes, représentant l'inventaire ou l'estimation d'icelui. (Voyez les articles 228, vers la fin ; 237, 241.)

ART. 223.—A married woman cannot sell, alienate nor mortgage her estates without the authority and express consent of the husband; and if she makes any contract without the authority and consent of her husband, such contract is null as well with regard to herself as her husband; and she cannot be sued nor her heirs, after the decease of the husband. (See the following Arts. and Arts. 234, 235, and 236.)

ART. 224.—The wife cannot act in court without the consent of her husband, if she is not authorised or legally separated and the said separation have taken place. (See the preceding Art. and Arts. 234, and 236.)

ART. 225.—The husband is Seigneur of the moveable and conquests immovable acquired by him during the marriage of him and his wife in such manner that he can sell, alienate or mortgage them and make use of and dispose of them by donation or other disposition *entre vifs* at his pleasure and will ~~them~~ without the consent of his said wife to a person capable of receiving and without fraud. (See Arts. 233, 283, and 296.)

ART. 226.—The husband cannot sell, exchange, divide or sell by auction, charge, oblige nor mortgage the proper estate of his wife without being authorised by her for that purpose. (See the preceding Art. and 233.)

ART. 227.—But the husband may lease or rent for six years, estates situate at Paris, and for nine years estates situate in the country and for a less period of time without fraud. (See the preceding Art.)

ART. 228.—The husband cannot, by contract and obligation made before or during the marriage, oblige his wife without her consent for more than the amount that she or her heirs receive from the community; provided always, that after the decease of one of the conjuncts legal inventory be made, and that there has been no fault nor fraud on the part of the wife or her heirs. (See Arts. 221, 222, 233, and 237.)

ART. 229.—After the decease of one of the conjuncts the property of the community is divided in such manner that half belongs to the survivor and the other half to the heirs of the deceased. (See the two following Arts. 220, 227, and 240.)

ART. 230.—The said half of conquests coming to the heirs of the deceased is the *propre* estate of the said heirs, so much so, that if the said heirs die without heirs of their body the said half returns to the nearest heir of the line and side from which the said half came, which property the father and mother, grand father and grand mother succeeding to their children, shall have and enjoy by usufruct during their lives in case there are no descendants of the Purchaser. (See Arts. 314, and 326.)

ART. 231.—The fruits of estates propres growing at the time of the decease of one of the conjuncts, belong to him to whom the said estate comes, on the charge of paying half of the tilling and sowing. (See Arts. 59, 92 and 94.)

ART. 223.—La femme mariée ne peut vendre, aliéner, ni hypothéquer ses héritages, sans l'autorité et consentement exprès de son mari. Et si elle fait aucun contrat sans l'autorité et consentement de son dit mari, tel contrat est nul, tant pour le regard d'elle, que de son dit mari, et n'en peut être poursuivie, ni ses héritiers, après le décès de son dit mari. (Voyez les deux articles suivans, et les 234, 235, 236.)

ART. 224.—Femme ne peut ester en jugement sans le consentement de son mari, si elle n'est autorisée ou séparée par justice, et la dite séparation exécutée. (Voyez l'article précédent, et les dits 234, 236.)

ART. 225.—Le mari est seigneur des meubles et conquêts immeubles par lui faits durant et constant le mariage de lui et sa femme. En telle manière qu'il les peut vendre, ou hypothéquer, et en faire et disposer par donation ou autre disposition faite entre vifs à son plaisir et volonté, sans le consentement de sa dite femme, à personne capable, et sans fraude. (Voyez les articles 233, 283, 296.)

ART. 226.—Le mari ne peut vendre, échanger, faire partage ou licitations charger, obliger, ni hypothéquer le propre héritage de sa femme, sans le consentement de sa dite femme, et icelle de par lui autorisée à cette fin. (Voyez l'article suivant, et le 233.)

ART. 227.—Peut toutefois le mari faire baux à loyer, de maison à six ans pour héritages assis à Paris, et à neuf ans pour héritages assis aux champs, et audessous, sans fraude. (Voyez l'article précédent.)

ART. 228.—Le mari ne peut par contrat et obligation, faite devant ou durant le mariage, obliger sa femme sans son consentement, plus avant que jusqu'à la concurrence de ce qu'elle, ou ses héritiers, amendent de la communauté, pourvu toutefois qu'après le décès de l'un des conjoints, soit fait loyal inventaire, et qu'il n'y ait faute ou fraude de la part de la femme ou de ses héritiers. (Voyez en la fin des articles 221, 222, 233, et 237.)

ART. 229.—Après le trépas de l'un des dits conjoints, les biens de la dite communauté se divisent en telle manière, que la moitié en appartient au survivant, et l'autre moitié aux héritiers du trépassé. (Voyez les deux articles suivans, et les 220, 227, 240.)

ART. 230.—Laquelle moitié des conquêts avenue aux héritiers du trépassé, est le propre héritage des dits héritiers. Tellement que si les dits héritiers vont de vie à trépas sans hoirs de leurs corps, icelle moitié retourne à leur plus prochain héritier du côté et ligne de celui des dits mariés, par le trépas duquel leur est advenue la moitié : desquels biens toutefois les père ou mère, aïeul ou aïeule succédant à leurs enfans, jouiront par usufruit leur vie durant : au cas qu'il n'y ait aucun descendant de l'acquéreur. (Voyez les articles 314, 326, au commencement.)

ART. 231.—Les fruits des héritages propres, pendans par les racines au tems du trépas de l'un des conjoints par mariage, appartiennent à celui auquel advient le dit héritage, à la charge de payer la moitié des labours et semences. (Voyez les articles 59, vers la fin; 92, 94.)

ART. 232.—If, during the marriage any estate or rent propre is sold belonging to one of the conjuncts—or if the said rent be recovered, the price of the sale or recovery is retaken upon the property of the community to the profit of him to whom the said estate or rent belongs although no agreement is mentioned in the sale for the employment of the monies or recompense and no declaration made respecting it. (See Arts. 244, and 292.)

ART. 233.—The husband is master of the moveables and possessory actions even if they proceed from the part of the wife. And the said husband can act alone and prosecute the said rights and actions without the wife. (See Arts. 225, 226, and 228.)

ART. 234.—A married woman cannot bind herself without the consent of her husband if she is not separated or a merchant, in which case, being a merchant, she binds both herself and her husband to the acts of her commerce as a merchant. (See Arts. 223, and 224.)

ART. 235.—The wife is not reputed a Public merchant for the sale of merchandise in which the husband is concerned, but is reputed Public merchant when she trades separate and a part from her husband. (See the preceding and the Art. 236 following ditto.)

ART. 236.—A married woman, being a Public merchant, can bind herself without her husband respecting the acts and expenses of her trade. (See the two preceding Arts.)

ART. 237.—It is lawful for a woman to renounce if she think proper, after the death of her husband to the community of the property between her and her said husband the same being entire, and in so doing the widow is liberated from the moveable debts due by her husband on the day of his death, on making a good and legal Inventory. (See Arts. 228, 240, and 341.)

ART. 238.—(Not followed.)

ART. 239.—Men and women conjuncts by marriage, are reputed to enjoy their rights to have the administration of their property but not sell, engage or alienate their immoveables during their minority. (See Arts. 32, 258, 272, and 293.)

ART. 240.—When one of the two conjuncts by marriage dies and leaves any minor children of the said marriage, if the survivor of the two conjuncts does not make an inventory in due form of the property which was in common during the said marriage, and at the time of the decease, whether moveables or conquests immoveable, the child or children surviving can, if they think proper, demand community of all the property, moveables and conquests immoveable of the survivor, if he remarries. (See Arts. 242, 243, and 297.)

ART. 241.—And for the dissolution of the community, it is requisite that the said inventory be made and perfected at the charges of the survivors closing the said inventory, within three months after it has been made, otherwise and in default of the survivors so doing, the community is continued at the option of the children. (See Art. 237.)

ART. 232.—Si durant le mariage est vendu aucun héritage ou rente propre, appartenant à l'un ou à l'autre des conjoints par mariage, ou si la dite rente est rachetée, le prix de la vente ou rachat est repris sur les biens de la communauté, au profit de celui auquel appartenait l'héritage ou rente : encore qu'en vendant n'eût été convenu de remploi ou récompense : et qu'il n'y ait aucune déclaration sur ce faire. (Voyez les articles 244, 282.)

ART. 233.—Le mari est Seigneur des actions mobilières et possessoires, posé qu'elles procèdent du côté de sa femme : et peut le mari agir seul, et déduire les dits droits et actions en jugement sans sa dite femme. (Voyez les articles 225, 226, 228.)

ART. 234.—Une femme mariée ne se peut obliger sans le consentement de son mari, si elle n'est séparée par effet ou marchande publique, auquel cas étant marchande publique, elle s'oblige et son mari touchant le fait et dépendance de la dite marchandise publique. (Voyez les deux articles suivans, et les 223, 224.)

ART. 235.—La femme n'est réputée marchande publique pour débiter la marchandise dont son mari se mêle : mais est réputée marchande publique quand elle fait marchandise séparée, et autre que celle de son mari. (Voyez l'article précédent, et le suivant.)

ART. 236.—La femme marchande publique se peut s'obliger sans son mari, touchant le fait et dépendance de la dite marchandise. (Voyez les deux articles précédens.)

ART. 237.—Il est loisible à toute femme noble ou non noble de renoncer (si bon lui semble) après le trépas de son mari, à la communauté des biens d'entr'elle et son dit mari, la chose étant entière : et en ce faisant demeurer quitte des dettes mobilières dues par son dit mari au jour de son trépas, en faisant faire bon et loyal inventaire. (Voyez les articles 228, sur la fin ; 240, 241.)

ART. 238.—(Nul.)

ART. 239.—Homme et femme conjoints par mariage, sont réputés usans de leurs droits, pour avoir l'administration de leurs biens, et non pour vendre, engager, ou aliéner leurs immeubles, pendant leur minorité. (Voyez les articles 32, 258, 272, en la fin ; 293.)

ART. 240.—Quand l'un des deux conjoints par mariage va de vie à trépas, et délaisse aucuns enfans mineurs du dit mariage, si le survivant des deux conjoints ne fait faire inventaire, avec personne capable et légitime contradicteur des biens qui étaient communs durant le dit mariage, et au tems du trépas, soit meubles ou conquêts immeubles, l'enfant, ou enfans survivans, peuvent si bon leur semble, demander communauté en tous les biens, meubles, conquêts et immeubles du survivant. Posé qu'icelui survivant se remarie. (Voyez les articles 242, 243, 297, en la fin.)

ART. 241.—Et pour la dissolution de la communauté, faut que le dit inventaire soit fait et parfait, et à la charge de faire clore le dit inventaire par le survivant, trois mois après qu'il aura été fait : Autrement et à faute de ce faire par le survivant, est la communauté continuée si bon semble aux enfans. (Voyez l'article précédent et le suivant ; avec le 237, en la fin.)

ART. 242.—If the survivor remarries again the said community is continued between them for one third, so that the children have a third, the husband and the wife each another third and if each of them have children of a former marriage, the said community is continued by fourths and the said community multiplied if there are children of each marriage, and is divided equally; so that the children of each marriage have but one share in the community in case they have not made an inventory as above said. (Arts. 240, and 253.)

ART. 243.—If any of the children who have continued the community die, or all but one, the survivors or the surviving of them continues the said community and takes as much as if all the children were living. (See the preceding Art. and 254.)

ART. 244.—When any rent due by one of the conjuncts by marriage or upon his estates before their marriage, is purchased by the said two conjuncts, or one of them during their marriage, such purchase is reputed conquest. (See the following Arts. and 155 and 222.)

ART. 245.—And the heir or possessor of the estate subject to the rent, is bound to continue the half of the said rent and pay the arrears from the day after the decease until the entire purchase. (See the preceding Art. and 232.)

ART. 246.—Immoveable property given to one of the conjuncts during their marriage with stipulation that it shall be *propre* to the *donnee*, does not fall in the community, but if it is given simply and without any stipulation to one of the conjuncts, it is common, save and except the donations made in the direct line which do not fall in the community.

TITLE XI.—SUMMARY.

Art. 247, Customary Dower. 248, Of what consists. 249, It is the property of the children. 250, Renouncing. 251, None can have the dower and inheritance together. 252, Must return whatever he received of the inheritance. 253, In case there are many children. 254, Is not increased by the death of the children of a first marriage. 255, It is the proper inheritance of the children. 256, It seizes. 257, Prefix dower of a sum of money. 258, Counter letters are null. 259, How reputed moveable. 260, From what share taken. 261, Prefix dower excludes the Customary. 262, Repairs due by the dowager. 263, It is the property of the heirs of the husband. 264, Of the security for the dower.

See Art. c. 30. sec 35-37-8 Dec 27 sec 34 & 1845)
 12 Dec c. 48, 1844) Dec c. 206 sec 9 (1853.)
 OF DOWER.

ART. 247.—A married woman is endowed with a customary dower, even if it has not been expressed or created in the marriage contract nor any dower mentioned. (See the following Art. and Arts. 220, 253, 256, 261, 262, and 263.)

ART. 242.—Si le survivant se remarie, la communauté est continuée entr'eux pour un tiers. Tellement que les enfans ont un tiers, le mari et la femme chacun un autre tiers : et si chacun d'eux a enfant d'autre précédent mariage, la dite communauté se continue par quart, et est la dite communauté, multipliée, s'il y avait d'autres lits, et se parlit également. En sorte que les enfans de chacun mariage ne font qu'un chef en la dite communauté. Le tout au cas qu'ils n'eussent fait inventaire comme dessus est dit. (Voyez les articles 240, et 253.)

ART. 243.—Si aucun des enfans qui ont continué la communauté meurt, ou tous, hors un, les survivans, ou survivant d'iceux enfans, continuent la dite communauté : et prennent autant que si tous les dits enfans étaient vivans. (Voyez l'article précédens, et le 254.)

ART. 244.—Quand aucune rente due par l'un des conjoints par mariage, ou sur ses héritages, paravant leur mariage, est rachetée par les dits deux conjoints, ou l'un des deux constant le dit mariage, tel rachat est réputé conquêt. (Voyez l'article suivant et les 155, vers le commencement, 232.)

ART. 245.—Et est tenu l'héritier ou détenteur de l'héritage sujet à la rente, continuer la moitié de la dite rente, et payer les arrérages du jour du décès, jusqu'à l'entier rachat. (Voyez l'article précédent, et le dit 232.)

ART. 246.—Chose immeuble donnée à l'un des conjoints pendant leur mariage, à la charge qu'elle sera propre au donataire, ne tombe en communauté. Mais si elle est donnée simplement à l'un des conjoints, elle est commune, hors et excepté les donations faites en ligne directe, lesquelles ne tombent en communauté. (Voyez les articles 53, 93, 220, et 278.)

TITRE XI.—SOMMAIRE.

Art. 247, Douaire coutumier. 248, En quoi consiste. 249, Est la propriété des enfans. 250, Renonçant. 251, Nul ne peut être héritier et douairier tout ensemble. 252, Doivent faire rapport de ce qu'ils peuvent avoir reçu d'héritage. 253, Au cas qu'il y ait plusieurs enfans. 254, N'est pas augmenté par la mort d'un des enfans d'un premier mariage. 255, Est le propre héritage des enfans. 256, Il saisit. 257, Douaire prefix d'une somme d'argent. 258, Contre-lettres lettres nulles. 259, Comment réputé mobilier. 260, Sur quelle part se prend. 261, Douaire prefix exclut douaire coutumier. 262, Réparations dues par le douairier. 263, Est la propriété des héritiers du mari. 264, De la sureté du douaire.

DES DOUAIRES.

ART. 247.—Femme mariée est douée de douaire coutumier; Posé que par exprès, au traité de son mariage ne lui eût été constitué, ni octroyé aucun douaire. (Voyez l'article suivant; et les 220, 253, 256, 261, 262, et 263.)

ART. 248.—Customary dower is the half of the estates which the husband holds and possesses on the wedding day and nuptial blessing and half the estates which after the consummation of the said marriage and during it, accrue and come in direct line to the said husband. (See the preceding Art. and 253.)

ART. 249.—The customary dower of the wife is the *propre* estate of the children of the said marriage/^x in such manner that the father and mother of the said children from the time of their marriage, cannot sell, engage, nor mortgage it to the prejudice of their children. (See Arts. 77, 177, 255, 256, and 263.)/x

ART. 250.—If the children coming from the said marriage do not claim as heirs of their father and abstain from taking the succession, in that case the dower belongs to the said children purely and simply, without paying any of the debts proceeding from their father, created since the said marriage. The dower is divided, either prefix or customary, between them without right of seniority or prerogative. (See Arts. 13, 29, and 310.)

ART. 251.—No body can take as heir to his father and receive the dower with respect to the customary and prefixed dower. (See Arts. 261 and 300.)

ART. 252.—He who wishes to have the dower ought to return and restore what he has had and received in marriage, and other advantage received from his father or deduct it from the dower. (See Arts. 276, and 304.)

ART. 253.—When the father has been married several times, the customary dower of the children of the first marriage is the half of the immoveables which he had when he first married and which have come to him during the said marriage in direct line and the customary dower of the children of the second marriage is the fourth part of the said immoveables together with half as well of the portion of the conquests belonging to the husband acquired during the said first marriage as the *acquets* made by him since the dissolution of the first marriage until the day of the consummation of the second and the half of the immoveables coming to him in the direct line during the said second marriage and so consequently of other marriages. (See Arts. 242, and 248.)

ART. 254.—If the children of the first marriage die before their father during the second marriage, the widow and the other children of the said second marriage surviving them, have only the dower which they would have had if the children of the first marriage were living, so that by the death of the children of the said first marriage, the dower of the wife and children of the second marriage is not increased and so consequently of the other marriages. (See the preceding Art. and 243.)

ART. 255.—The dower constituted by the husband, his relations or others for him, is the *propre* estate of the children issue of the said marriage, to enjoy the same after the death of their father and mother as soon as the dower takes place. (See the following Arts. also 117, and 249.)

ART. 248.—Douaire coutumier est de la moitié des héritages que le mari tient et possède au jour des épousailles, et bénédiction nuptiale; et de la moitié des héritages qui depuis la consommation du dit mariage, et pendant icelui, échéent et adviennent en ligne directe au dit mari. (Voyez l'article précédent, et le 253.)

ART. 249.—Le Douaire coutumier de la femme, est le propre héritage des enfans venans du dit mariage: en telle manière, que les pères et mères des dits enfans, dès l'instant de leur mariage, ne le peuvent vendre, engager, ni hypothéquer au préjudice de leurs enfans. (Voyez les articles 17, au milieu; 117, 255, 256, 263.)

ART. 250.—Si les enfans venans du dit mariage, ne se portent héritiers de leur père, et s'abstiennent de prendre la succession, en ce cas le dit douaire appartient aux dits enfans, purement et simplement, sans payer aucunes dettes, procédant du fait de leur père, créées depuis leur mariage. Et se partit le douaire, soit préfix ou coutumier, entr'eux, sans droit d'ainesse ou prérogative. (Voyez les articles suivans; et les 13, 27, 319.)

ART. 251.—Nul ne peut être héritier et douairier ensemble, pour le regard de douaire coutumier ou préfix. (Voyez l'article précédent avec le suivant; et les 261 et 300.)

ART. 252.—Celui qui veut avoir le douaire doit rendre et restituer ce qu'il a eu et reçu en mariage, et autres avantages de son père, ou moins prendre sur le douaire. (Voyez les articles 278, 304.)

ART. 253.—Quand le père a été marié plusieurs fois, le douaire coutumier des enfans du premier lit, est la moitié des immeubles qu'il avait lors du dit premier mariage, et qui lui sont venus pendant icelui mariage, en ligne directe. Et le douaire coutumier des enfans du second lit, du quart des dits immeubles; ensemble moitié tant de la portion des conquêts appartenans au mari, faits pendant le dit premier mariage, que des acquêts par lui faits depuis la dissolution du dit premier mariage, jusqu'au jour de la consommation du second, et la moitié des immeubles qui lui échéent en ligne directe pendant le dit second mariage; et ainsi conséquemment des autres mariages. (Voyez l'article 242 et 248.)

ART. 254.—Si les enfans du premier mariage meurent avant leur père, pendant le second mariage, la veuve et autres enfans du dit second mariage les survivans, n'ont que tel douaire qu'ils eussent eu, si les enfans du dit premier mariage, étaient vivans: tellement que par la mort des enfans du dit premier mariage, le douaire de la femme et enfans du dit second mariage, n'est augmenté; et ainsi conséquemment des autres mariages. (Voyez l'article précédent, et le 243.)

ART. 255.—Le douaire constitué par le mari, ses parens ou autres de par lui, est le propre héritage aux enfans issus du dit mariage; pour d'icelui jouir après le trépas de père et mère incontinent que douaire a lieu. (Voyez les articles suivans; et les 117, 249.)

ART. 256.—Dower whether customary or prefix is transmitted without any necessity of prosecuting for the same and the fruits and arrears accrue from the day of the decease of the husband. (See the preceding Art. also 285 and 318.)

ART. 257.—The wife endowed with a prefix dower of a sum of money or a rent, if during the marriage a mutual gift is made, she enjoys after the decease of her husband, by usufruct, the part of the moveables and conquests of her husband; and on the surplus of the property of the said husband, takes her said dower without any deduction or confusion. (See Arts. 40, 248, 260, 280.)

ART. 258.—All counter letters made separately and not in the presence of the relations who assisted at the marriage contract are null. (See Art. 182.)

ART. 259.—Dower of a sum of money paid to the children is reputed moveable and loses the nature of dower and the nearest heirs of the moveable property succeed to it. (See Arts. 94, 311, and 325.)

ART. 260.—Prefix dower whether of rent or money is taken from the part of the husband without any confusion of the community and separate. (See Arts. 40, and 257.)

ART. 261.—The wife endowed with the prefix dower cannot demand the customary dower, if it is not given to her by the contract of marriage. (See Arts. 251, and 257.)

ART. 262.—The wife who takes the customary dower is bound to preserve the estates by repairing them during her life; which repairs are those that are necessary to preserve the same, not including the four large walls, beams and coverings and vaults. (See Arts. 267 and 287.)

ART. 263.—The Dower whether in kind, rent or money, promised to a woman is hers during her life time only, if there are no children born and procreated during the said marriage. And such dower ought after the death of the woman to return to the heirs of the husband, if there is no contract to the contrary. (See Arts. 249 and 314.)

ART. 264.—And in case the wife does not marry again, the said dower ought to be delivered to her on her giving her own personal security but if she marries she will be obliged to give good and sufficient security. (See Arts. 39, 268, 276 and 285.)

TITLE XII.

OF THE NOBLE GUARDIANSHIP AND BOURGEOISE.

This title is composed of Articles 265, 266, 267, 268, 269, 270, and 271.—
(Are not followed.)

ART. 256.—Douaire soit coutumier ou préfix, saisit sans qu'il soit besoin de le demander en jugement. Et courent les fruits et arrérages du jour du décès du mari. (Voyez l'article précédent, et les 285, 318.)

ART. 257.—La femme douée de douaire préfix d'une somme de deniers pour une fois, ou d'une rente, si durant le mariage est fait don mutuel, jouit après le trépas de son mari par usufruit de la part des meubles et conquêts de son dit mari ; et sur le surplus des biens du dit mari, prend son dit douaire, sans aucune diminution, ni confusion. (Voyez les articles 40, 248, 260, 280.) ;

ART. 258.—Toutes contre-lettres faites à part, et hors la présence des parens qui ont assisté aux contrat de mariage, sont nulles. (Voyez l'article 182.)

ART. 259.—Douaire d'une somme de deniers pour une fois payer venue aux enfans, est réputé mobilier, et perd la nature de douaire, et y succèdent les plus proches héritiers mobiliers. (Voyez les articles 94, 311 et 325, au milieu.)

ART. 260.—Douaire préfix, soit en rente ou deniers, se prend sur la part du mari, sans aucune confusion de la communauté, et hors part. (Voyez les articles 40 et 257, en la fin.)

ART. 261.—Femme douée de douaire préfix, ne peut demander douaire coutumier, s'il ne lui est permis par son traité de mariage. (Voyez les articles 251, 257.)

ART. 262.—La femme qui prend douaire coutumier, est tenue entretenir les héritages de réparations viagères, qui sont toutes réparations d'entreteneimens, hors les quatre gros murs, poutres, et entières couvertures et voûtes. (Voyez l'article 267, vers la fin ; 287.)

ART. 263.—Le douaire, soit en espèce, rente, ou deniers, n'est qu'à la vie de la femme tant seulement, s'il n'y a enfans nés et procréés du mariage. Et doit tel douaire après le trépas de la femme revenir aux héritiers du mari, s'il n'y a contrat au contraire. (Voyez les articles 249, et le 314, en la fin.)

ART. 264.—Et au cas que la dite femme ne se remarie, aura délivrance de son dit douaire à sa caution juratoire. Mais si elle convole en autre mariage, sera tenue bailler bonne et suffisante caution. (Voyez les articles 39, 268, vers la fin ; 276, en la fin, et 285.)

TITRE XII.

DE GARDE NOBLE, ET BOURGEOISE.

Ce titre est composé des Articles 265, 266, 267, 268, 269, 270 et 271.—(N'est pas suivi.)

TITLE XIII.—SUMMARY.

Art. 272, Who can give inter vivos. 273, Give and retain. 274, Interpretation. 275, What if the usufruct is retained. 276, If minors. 277, Inter vivos. 278, Of things reputed given in advance of inheritance. 279, Woman who re-marries having children. 280, Of the mutual gift between married persons. 281, Lawful condition to be made. 282, Mutual gift. 283, Prohibition. 284, Explanation. 285, Conditions. 286, Advance. 287, Repairs. 288, New appraisal of moveables.

OF DONATIONS AND MUTUAL GIFT.

ART. 272.—It is lawful for all persons of twenty-five (1) years of age and of sound mind to give and dispose by donation and disposition *entre vifs* of all his moveables and estates, *propres, acquets* and *conquêts*, to a person capable of receiving, and notwithstanding, he who marries and who has obtained the benefit of age can, having the age of twenty, dispose of his moveables. (See Arts. 239, 276, 277, 283, 293 and 294.)

ART. 273.—To give and retain is not a valid act.

ART. 274.—It is to give and retain when the donor reserves to himself the right to dispose freely of the thing which he gives, or that he retains it in his possession until the day of his decease. (See the following Art. and 215.)

ART. 275.—It is not to give and retain when one gives the property of any estate reserving to one self the usufruct for life or for a time, or when there is a clause of *constitut* or *précire*, such donation is valid. (See the end of the preceding Art. and 115.)

ART. 276.—Minors and other persons being under the power of others cannot give, bequeath directly or indirectly, to the advantage of their tutors, curators, pedagogues or other administrators, during the time of their administration and until they have rendered an account, but they may dispose to the benefit of their father and mother, grandfather and grandmother, or other ascendants; although, they should be in the above capacity, provided that at the time of the will and death of the said testator, the said father and mother or other ascendants are not re-married. (See the end of Art. 268, and Arts. 272, 293, and 294.)

ART. 277.—All donations, although made *inter vivos*, by persons being in bed sick, of which sickness they die, are reputed made on account of death and testamentary and not *entre vifs*. (See Arts. 272, 280, and 292.)

ART. 278.—Moveables or immoveables given by father or mother to their children are reputed given in advance of their inheritance. (See Arts. 246, 304, and 308.)

(1) Now twenty-one years.

B

TITRE XIII.—SOMMAIRE.

Art. 272, Qui peut donner entre vifs. 273, Donner et retenir ne vaut. 274, Comment s'entend donner et retenir. 275, Quant il y a retention d'usufruit. 276, Des mineurs. 277, Inter vivos. 278, Donation comment réputée testamentaire. 278, Quelle chose réputée donnée en avancement d'hoirie. 279, Femme qui se remarie ayant enfants. 280, Donation mutuelle entre mariés. 281, Convention licite entre elles. 282, Don mutuel. 283, Prohibition. 284, Explication. 285, Conditions. 286, Que doit avancer le donataire mutuel. 287, Réparations dont il est tenu. 288, Nouvelle prisee.

DES DONATIONS ET DON MUTUEL.

ART. 272.—Il est loisible à toute personne âgée de vingt-cinq (1) ans accomplis, et saine d'entendement, donner et disposer par donation et disposition faite entre vifs, de tous ses meubles et héritages propres acquêts et conquêts, à personne capable. Et néanmoins celui qui se marie, ou qui a obtenu bénédiction d'âge entérinée en justice, peut ayant l'âge de vingt ans accomplis, disposer de ses meubles. (Voyez les articles 239, 276, 277, 283, 293, 294.)

ART. 273.—Donner et retenir ne vaut. (Voyez l'article suivant, et le 106, au commencement.)

ART. 274.—C'est donner et retenir, quand le donateur s'est réservé la jouissance de disposer librement de la chose par lui donnée, ou qu'il demeure en possession, jusqu'au jour de son décès. (Voyez l'article suivant, et le 115, vers la fin.)

ART. 275.—Ce n'est donner et retenir, quand l'on donne la propriété d'aucun héritage, retenu à soi l'usufruit à vie ou à téms, ou quand il y a clause de constitut ou précaire : Et vaut telle donation. (Voyez l'article précédent, et le 115, en la fin.)

ART. 276.—Les mineurs et autres personnes étant en puissance d'autrui, ne peuvent donner ou tester directement ou indirectement, au profit de leurs tuteurs, curateurs, pédagogues, ou autres administrateurs, ou aux enfans des dits administrateurs, pendant le tems de leur administration, et jusqu'à ce qu'ils aient rendu compte. Peuvent toutefois disposer au profit de leur père, mère, aïeul, ou aïeule, ou autres ascendans, encore qu'ils soient de la qualité susdite, pourvu que lors du testament et décès du testateur, les dits père, mère, ou autres ascendans, ne soient remariés. (Voyez les articles 268, en la fin ; 272, 293, 294.)

ART. 277.—Toutes donations, encore qu'elles soient conçues entre vifs, faites par personnes gissant au lit malades de la maladie dont ils décèdent, sont réputées faites à cause de mort, et testamentaires, et non entre vifs. (Voyez l'article 272, 280, 292.)

ART. 278.—Meubles ou immeubles donnés par père ou mère à leurs enfans sont réputés donnés en avancement d'hoirie. (Voyez l'article 246, en la fin ; et les 304 et 308.)

(1) Actuellement vingt-un ans.

ART. 279.—A woman marrying a second time or oftener, having children, cannot enrich her second husband with her *propres* and *acquêts* more than one of her children, and with regard to *conquêts* made with her former husband, cannot dispose of anything whatever to the prejudice of the portions which the children of the first marriage can claim from their mother, and notwithstanding the children of the subsequent marriages, succeed to the said *conquêts* with the children of the preceding marriages, equally coming to the succession of their mother; so, likewise the children of the preceding marriage succeed for their parts and portions to the *conquêts* made during the subsequent marriage; but if the said marriage be dissolved or that the children of the preceding marriage die, she can dispose of it as her own. (See the following Art.)

ART. 280.—Man and woman, joined by marriage, being in health may, and it is lawful to make mutual donation to one another equally, of all their property, moveables and *conquêts* immoveables, acquired during their marriage and which belong to them and are in common between them at the decease of one of them, for the survivor of the conjoints to enjoy the same only during his life on giving sufficient security to restore the said property after his decease, provided there are no children, either of the two conjoints or of one of them, at the decease of the first. (See Arts. 220, 238, 257, 283, and 284.)

ART. 281.—Fathers and mothers, marrying their children, can agree that their said children will allow the survivor of the said father and mother to enjoy the moveables and *conquêts* immoveables of the predeceased during the life of the survivor, provided that they do not marry again, and such agreement is not reputed an advantage to the said conjoints. (See Arts. 268, and 276.)

ART. 282.—Men and women, joined by marriage, during the marriage, cannot benefit one another by donation *entre vifs*, nor otherwise directly or indirectly, in any way whatever, except by mutual gift, as above mentioned. (See the two precedent Arts.; also 232, 258, 280, and 298.)

ART. 283.—Conjoints cannot give to the children of one another of a former marriage, in case they or one of them have children. (See the two following Arts.; also 279, 280, and 306.)

ART. 284.—A mutual gift of itself does not seize but is subject to deliverance; and to be valid, it ought to be registered within four months from the making of the contract, and the registry made by one of them is valid for both. After which registration, the said mutual gift is not revocable without the consent of the two conjoints. (See the following Art.; also 256, 280, and 318.)

ART. 285.—The mutual donee does not gain the fruits but from the day he has given sufficient security, and the fruits belong to the heirs until the said security is offered, which said security can be legally offered at the first notice. (See Arts. 61, 134, 256, and 318.)

ART. 286.—The mutual donee is held to advance and pay the obsequies and the funeral expenses of the first deceased, together with the part and half of the common debts due by the said first deceased, which obsequies and funeral ex-

ART. 279.—Femme convolant en secondes ou autres nœces, ayant enfans ne peut avantager son second mari, ou autre subséquent mari, de ses propres et acquêts plus que l'un de ses enfans. Et quant aux conquêts faits avec ses précédens maris, n'en peut disposer aucunement au préjudice des portions, dont les enfans des dits premiers mariages, pourraient amender de leur mère. Et néanmoins succèdent les enfans des subséquens mariages aux dits conquêts, avec les enfans des mariages précédens, également venans à la succession de leur mère. Comme aussi les enfans des précédents lits succèdent pour leurs parts et portions aux conquêts fait, pendant et constant les subséquens mariages. Toutefois si le dit mariage est dissolu, ou que les enfans du précédent mariage décèdent, elle en peut disposer comme de sa chose. (Voyez l'article suivant.)

ART. 280.—Homme et femme conjoints par mariage, étant en santé, peuvent et leur loit, faire donation mutuelle l'un à l'autre également de tous leurs biens, meubles et conquêts immeubles faits durant et constant leur mariage, et qui sont trouvés à eux appartenir, et être communs entr'eux à l'heure du trépas du premier mourant des dits conjoints : pour en jouir par le survivant d'iceux conjoints sa vie durant seulement, en baillant par lui caution suffisante de restituer les dits biens après son trépas : pourvu qu'il n'y ait enfans, soit des deux conjoints, ou de l'un d'eux lors du décès du premier mourant. (Voyez l'article 220, le 238 sur la fin, 257 au milieu, 283 en la fin, 284 au commencement, 285.)

ART. 281.—Père et mère mariant leurs enfans, peuvent convenir, que leurs dits enfans laisseront jouir le survivant de leursdits père et mère, des meubles et conquêt du prédécédé, la vie durant du service, pourvu qu'ils ne se remarient. Et n'est réputé tel accord avantage entre les dits conjoints. (Voyez les deux articles suivans et sur la fin des 268, 276.)

ART. 282.—Homme et femme conjoints par mariage, constant icelui, ne peuvent avantager l'un l'autre par donation faite entre vifs, ni autrement, directement ni indirectement, en quelque manière que ce soit, sinon par don mutuel, tel que dessus. (Voyez les deux articles précédens, et le suivant, avec les 232, 258, 280, 196.)

ART. 283.—Ne peuvent les dits conjoints donner aux enfans l'un de l'autre d'un premier mariage, au cas qu'ils, ou l'un d'eux, aient enfans. (Voyez les articles 279, 280, en la fin, et 306, au commencement.)

ART. 284.—Un don mutuel de soi ne saisit, ainsi est sujet à délivrance. Et pour être valable, doit être insinué dans les quatre mois du jour du contrat, et l'insinuation faite par l'un d'eux, vaut pour tous deux. Après laquelle insinuation, le dit don mutuel n'est révocable, sinon du consentement des deux conjoints. (Voyez l'article suivant, et les 256, 280, 318.)

ART. 285.—Le Donataire mutuel ne gagne les fruits, que du jour qu'il a présenté caution suffisante, et demeurent les fruits à l'héritier, jusqu'à la dite caution présentée : laquelle caution il peut présenter en jugement dès la première assignation. (Voyez l'article précédent, et les 61, 134, 256, 318.)

ART. 286.—Le Donataire mutuel est tenu avancer et payer les obsèques et funérailles du premier décédé ; ensemble la part et moitié des dettes communes dues par le dit premier décédé. Lesquelles obsèques et funérailles, et moitié des

penices and half of the debts, must be deducted from the half and portion of the first deceased. But he is not bound to pay the legacies and other testamentary dispositions. (See Arts. 267, 295, and 296.)

ART. 287.—And also he who would enjoy the mutual gift is bound to make all necessary repairs to be made on the estates, subject to the said mutual gift, and pay the *cens* and annual charges, and the arrears as well of rents *foncieres*, as other rents constituted during the community, due since the enjoyment of the said mutual gift, without hopes of recovery. (See Arts. 262, and 267.)

ART. 288.—The heir can demand of the donee that a new price be set upon the moveables by persons whom they agree upon, and to have the said moveables prized at a just estimation, different from that of the inventory, and in so doing, the said mutual donee will have the enjoyment of the said moveables, without being obliged to sell them. (See Arts. 58, 222, and 305.)

TITLE XIV.—SUMMARY.

Art. 289, Of the form and division of wills. 290, Not followed. 291, Of the registers. 292, In whose favor and what property. 293, Of the age required. 294, Exception. 295, Propres. 296, The husband can only devise the half of the conquests. 297, Of testamentary executors. 298, Of the legitime of children.

WILLS AND EXECUTION OF WILLS.

ART. 289.—In order to make a solemn will, it is necessary that it be written and signed by the testator, or that it be passed before two Notaries, or before the Curate of the Parish of the testator or his Vicar General, and one Notary or by the said Curate or Vicar and three witnesses, or one Notary and two witnesses, being males, aged twenty years, and not legatees, and that it has been dictated and named by the testator to the said Notaries, Curate or Vicar General, it must afterwards be read to him in the presence of the said Notaries, Curate or Vicar General and witnesses, and that it be mentioned in the said will that it has been dictated and read, and that it be signed by the said testator and by the witnesses, or that mention be made why they could not sign. (See Arts. 63, and 293.)

ART. 290.—(Not followed.)

ART. 291.—And also the said Curates and Vicars General are bound to carry and cause to be carried every three months to the Register's office, as before mentioned, the registers of baptisms, marriages, wills and burials, on pain of all costs, damages and interests, and for this they do not pay anything at the Register's office. (1)

(1) Notified by 35 Geo. III., chapt. 4 : and by Prov. Stat. 9 and 10 Geo. IV., Ministers of all denomination of Christians and Jews are allowed to keep registers. A duplicate of the said Registers is to be fyled once a year in the Court of Queen's Bench.

dettes, lui doivent être déduites sur la part et portion du dit premier décédé. Toutefois n'est tenu payer les legs et autres dispositions testamentaires. (Voyez l'article 267, vers le milieu, et plus bas, 295, en la fin; 296.)

ART. 287.—Aussi est tenu celui qui veut jouir du don mutuel, faire faire les réparations viagères étant à faire sur les héritages sujets au dit don mutuel : et payer les cens et charges annuelles, les arrérages tant des rentes foncières, que des autres rentes constituées pendant la communauté, échus depuis la jouissance du dit don mutuel, sans espérance de les recouvrer. (Voyez les articles 262, 267, vers le milieu ; et plus bas.)

ART. 288.—L'héritier peut demander à l'encontre du dit donataire, que nouvelle prisee soit faite des meubles par gens dont ils conviendront : pour être les dits meubles prisés à la juste estimation, autre que celle faite par l'inventaire. Et en ce faisant, le dit donataire aura la jouissance des dits meubles, sans qu'il soit tenu les faire vendre. (Voyez en la fin des articles 58, 222, 305.)

TITRE XIV.—SOMMAIRE.

Art. 289, De la forme et division des testamens. 290, Non suivi. 291, Des registres. 292, En faveur de qui et de quels biens. 293, De l'âge requis. 294, Exception. 295, Des propres. 296, Le mari ne peut léguer que la moitié des conquêts. 297, Des exécuteurs testamentaires. 298, De la légitime des enfants.

DES TESTAMENS ET EXECUTION D'ICEUX.

ART. 289.—Pour réputer un testament solennel, est requis qu'il soit écrit et signé du testateur, ou qu'il soit passé pardevant deux Notaires, ou pardevant le Curé de la paroisse du testateur, ou son Vicaire Général, et un Notaire : ou du dit Curé ou Vicaire, et trois témoins : ou d'un Notaire et deux témoins ; iceux témoins idoines, suffisans, mâles, et âgés de vingt ans accomplis, et non légataires : et qu'il ait été dicté et nommé par le testateur aux dits Notaires, Curé ou Vicaire Général, et depuis à lui relu en la présence d'iceux Notaires, Curé, ou Vicaire Général, et témoins : et qu'il soit fait mention au dit testament, qu'il a été dicté, nommé et relu. Et qu'il soit signé par le dit testateur, et par les témoins : ou que mention soit faite de la cause pour laquelle ils n'ont pu signer. (Voyez les articles 63, 293.)

ART. 290.—(Non suivi.)

ART. 291.—Sont aussi tenus les dits Curés et Vicaires Généraux, de porter et faire mettre de trois mois en trois mois, es Greffes comme dessus, les registres des baptêmes, mariages, testamens, et sépultures, sur peine de tous dépens, dommages et intérêts. Et pour ce, ne doivent rien payer au Greffe. (Voyez l'article précédent.)(1)

(1) Modifié par un Acte de la 35^{ème} Geo. III chap. 4 et par le Statut Prov. 9 et 10, Geo. IV, par lesquels il est permis aux ministres de toutes dénominations de chrétiens et même des juifs de tenir des registres. Un duplicata desquels doit être filé au greffe de la Cour du Banc du Roi une fois l'année.

ART. 292.—All persons of sound mind, of age, and enjoying their rights, can dispose by testament and ordinance of last will to the advantage of persons capable of receiving, of all their goods moveables *acquêts* and *conquêts* immoveable and of the fifth part of all their *propres* estates and not more even if it was for a charitable use. (See the following Art. and Arts. 272, 294 (1))

ART. 293.—To bequeath moveables, *acquêts* and *conquêts* immoveables, twenty years of age is requisite, and to devise the fifth of the *propres* twenty-five years completed (*now twenty one.*)

ART. 294.—But if the Testator has neither moveables, *acquêts* or *conquêts* immoveable can in that case devise the fifth of his *propres*, after twenty years completed. (See the preceding and following Articles.)

ART. 295.—If the heir is content with taking the four-fifths of the *propres*, and leaves the moveables *acquêts* and *conquêts* immoveables with a fifth of the said *propres* to all the legatees, he can do so and in so doing he will remain possessed of the said four-fifths, and the legatees will take the surplus, the debts being always first paid, on all the property of the inheritance. (See Art. 298.)

ART. 296.—The husband by his will or ordinance of last will, cannot dispose of moveable property and *conquêts* immoveable common between him and his wife, to the prejudice of his said wife, nor the half of what may belong to her in the same by the death of her husband. (See Arts. 225, 282 and 286.)

ART. 297.—The testamentary executors are seized during the year and day from the death of the deceased, of the moveable property belonging to the deceased for the accomplishment of his will, if the Testator has not ordered that his executors shall be seized of certain sums only, and the said executor is bound to make an inventory in diligence as soon as the will has come into his hands, the apparent heir present or duly called. (See Arts. 228, 237, 240, 269, and 318.)

ART. 298.—The legitime is the half of such part and portion that each child would have had in the succession of his father and mother, grand father or grand mother, or other ancestors, if the said father and mother or other ancestors had not disposed thereof, by donation *entre vifs* or last will, deducting the debts and funeral expenses. (See Arts. 17, 295 and 307.)

(1) By the Act Geo. III. cap. 83, every proprietor of immoveable property who has the right to dispose of the same during his life, may at his death dispose by will of the same, either *in toto* or in part, in favour of whom he pleases.

ART. 292.—Toutes personnes saines d'entendement, âgées et usantes de leurs droits, peuvent disposer par testament et ordonnance de dernière volonté, au profit de personne capable, de tous leurs biens, meubles, acquêts et conquêts immeubles, et de la cinquième partie de tous leurs propres héritages, et non plus avant : encore que ce fut pour cause pitoyable. (Voyez l'article suivant ; et les 272, 294.) (1)

ART. 293.—Pour tester des meubles, acquêts et conquêts immeubles, faut avoir accompli l'âge de vingt ans. Et pour tester du quint des propres, faut avoir accompli l'âge de vingt-cinq ans, *maintenant vingt-un ans*. (Voyez l'article précédent et le suivant ; et les 272, 289.)

ART. 294.—Toutefois si le testateur n'a meubles, acquêts, ni conquêts immeubles, peut au dit cas tester du quint du ses propres, après vingt ans accomplis. (Voyez les deux articles précédens, et le suivant.)

ART. 295.—Si l'héritier se veut contenter de prendre les quatre quintes des propres, et abandonner les meubles, acquêts et conquêts immeubles, avec le quint des dits propres, à tous les légataires, faire le peut : en quoi faisant il demeurera saisi des dits quatre quintes, et les dits légataires prendront le surplus, les dettes toutefois préalablement payées sur tous les biens de l'hérédité. (Voyez l'article 298, en la fin.)

ART. 296.—Le mari par son testament ou ordonnance de dernière volonté, ne peut disposer des biens meubles et conquêts immeubles communs entre lui et sa femme, ni de la moitié qui lui peut appartenir en iceux par le trépas de son dit mari. (Voyez les articles 225, 282, 286, en la fin.)

ART. 297.—Les exécuteurs testamentaires sont saisis durant l'an et jour du trépas du défunt, des biens meubles demeurés à son décès pour l'accomplissement de son testament, si le testateur n'avait ordonné, que ses exécuteurs fussent saisis de sommes certaines seulement. Et est tenu le dit exécuteur de faire faire inventaire en diligence, sitôt que le testament est venu à sa connaissance, l'héritier présomptif présent, ou duement appelé. (Voyez l'article 223, vers la fin ; 237, en la fin ; 240, vers le milieu ; 269, au milieu ; et le 318.)

ART. 298.—La légitime est la moitié de telle part et portion que chacun enfant eut eu en la succession des dits père et mère, aïeul ou aïeule, ou autres ascendans, si les dits père et mère ou autres ascendans n'eussent disposé par donations entre vifs, ou dernière volonté. Sur le tout déduit les dettes et frais funéraires. (Voyez l'article 17, vers le milieu ; et à la fin des 295, et 307.)

(1) Par l'Acte Geo. III cap. 83, il est loisible à tout propriétaire d'immeubles qui a le droit d'aliéner pendant sa vie d'en disposer à sa mort par testament, en tout ou partie à qui bon lui semble.

TITLE XV.—SUMMARY.

Art. 299, Institution of heirs. 300, None can be heir and legatee together. 301, But may be donee and heir. 302, Mode of inheriting. 303, No preference. 304, Of the Rapport. 305, Its form. 306, 307, do. 308, Succession of ancestors. 309, Fruits. 310, Of the share of the one who renounces. 311, Ascendants. 312, Proper estates do not ascend. 313, Ascendants succeed to the gifts by them made. 314, Reversion. 315, Ancestors, how succeed. 316, Acceptation of succession is free. 317, Act of heirship. 318, Seizin. 319, representation in the direct line. 320, Do. in the collateral. Idem to the 227, and 328, 329 how reputed of the line. 330, Failing one line the other comes in. 331, No right of birthright in the collateral line. 323, Succeed and pay debts equally. 333, Holders of mortgaged property pay the whole; how? 334, Exceptions. 335 and 336, Succession of ecclesiastics. 337, Of Ditto, Regulars. 338, Uncle, nephew and cousin germain. 339, Uncle and nephews. 340, Brothers and sisters of one side. 341, Other collaterals of one side. 342, The heir simple excludes the beneficiary heir. 343, If the minor can exclude him. 344, Of the Curator to vacant property.

SUCCESSIONS.

ART. 299.—Institution of the heir does not take place, that is to say, that it is not requisite and necessary for the validity of the will, but the disposition is valid to the amount of the property which the testator can lawfully dispose of by the custom. (See Arts. 292 and 294.)

ART. 300.—No person can be both heir and legatee. (See Art. 301.)

ART. 301.—But can always be donee and heir in the collateral line. (See the preceding Art. and Art. 257.)

ART. 302.—The children being heirs of a deceased, come equally to the succession of the said deceased, save and except the estates held in fief or nobly, according to the limitation mentioned in the title of fiefs. (See Arts. 13, 15, 16, 17, 18 and 68.)

ART. 303.—Father and mother cannot by donation made *entre vifs* by will or ordinance of last will, or otherwise in any manner whatever, give their children coming to the succession, the one more than the other. (See Art. 307.) (1)

ART. 304.—The children coming to the succession of the father or mother, ought to return what has been given to them to be put with the other property of the said succession, to be divided between them, or take less. (See Arts. 246, 278 and 306.)

ART. 305.—If the donee at the time of the division has the estates given to him in his possession, he is bound to restore them, or take less in other estates of the same succession of equal value and goodness; and in making the said restoration in kind, he ought to be reimbursed by the coheirs for the useful and necessary expenses, and if the coheirs will not reimburse the said expense, in that case the

(1) See note preceding page.

TITRE XV.—SOMMAIRE.

Art. 299, Institution d'héritier. 300, Ne peut être héritier et légataire ensemble. 301, Mais donataire et héritier. 302, Manière d'hériter. 303, Point de préférence. 304, Rapport. 305, Forme du rapport. 306, Idem. 307, Idem. 308, Succession des ayeux. 309, Fruits. 310, Portion de celui qui renonce. 311, Ascendans. 312, Propres ne remontent. 313, Ascendans succèdent à leurs dons. 314, Réversion. 315, Comment succèdent en propriété. 316, Addition d'hérédité. 317, Acte d'héritier. 318, La mort saisit le vif. 319, En ligne directe la représentation à l'infini. 320, Comment en collatérale. 321, Succèdent par tête, 322, Distinction. Depuis 223 à 226, Fief et roture. 327, 328, Enfans des frères sont une tête, leur oncle une autre. 329, Comment réputés du côté et ligne. 330, Manquant ceux d'un côté succèdent ceux de l'autre. 331, En fief point de droit d'aînesse en collatérale. 332, Succèdent et payent les dettes également. 333, Détenteurs d'héritages obligés payent le tout; comment? 334, Exception. 335 et 336, Succession des Ecclésiastiques. 337, Do. réguliers. 338, Oncle, neveu et cousin germain. 339, Oncle et neveux. 340, Frères et sœurs d'un côté. 341, Autres collatéraux d'un côté. 342, Héritier simple exclut le bénéficiaire. 343, Si le mineur le peut exclure. 344, Do. curateur aux biens vacans.

SUCCESSIONS.

ART. 299.—Institution d'héritier n'a lieu, c'est-à-dire, qu'elle n'est requise et nécessaire pour la validité d'un testament: mais ne laisse de valoir la disposition jusqu'à la quantité des biens, dont le testateur peut valablement disposer par la Coutume. (Voyez les articles 292, 294.)

ART. 300.—Aucun ne peut être héritier et légataire d'un défunt ensemble. (Voyez l'article suivant, et les 351, 261.)

ART. 301.—Peut toutefois entre vifs, être donataire et héritier en ligne collatérale (Voyez l'article précédent, et le 257.)

ART. 302.—Les enfans héritiers d'un défunt, viennent également à la succession d'icelui défunt, hors et excepté des héritages tenus en fief, ou franc aleu noble, selon la limitation mentionnée au titre des dits fiefs. (Voyez les articles 13, 15, 16, 17, 18 et 68.)

ART. 303.—Père et mère ne peuvent par donation faite entre vifs, par testament et ordonnance de dernière volonté, ou autrement en manière quelconque, avantager leurs enfans venant à leurs successions, l'un plus que l'autre. (Voyez l'article suivant, et le 307.) (1)

ART. 304.—Les enfans venant à la succession de père ou mère, doivent rapporter ce qui leur a été donné, pour avec les autres biens de la dite succession, être mis en partage entr'eux, ou moins prendre. (Voyez l'article 246, en la fin, • 278, 306.)

ART. 305.—Si le donataire, lors du partage, a les héritages à lui donnés en sa possession, il est tenu les rapporter en essence et espèce, ou moins prendre en autres héritages de la succession de pareille valeur et bonté. Et faisant le dit rapport en espèce, doit être remboursé par ses co-héritiers des impenses utiles et nécessaires. Et si les dits co-héritiers ne veulent rembourser les dites impenses,

(1) Voyez note au bas de la page précédente.

donee is bound to restore only the estimation of the said estates, having regard to the time that the division and partition is made between them, the expenses being deducted. (Art. 306.)

ART. 306.—Also what has been given to the children of those who are heirs, and succeed to their father and mother or other ascendants, is subject to be returned, or take less as above stated.

ART. 307.—Notwithstanding where he to whom one has given, would wish to keep his gift, he can do it on his giving up the inheritance, the legitime reserved to the others. (Arts 298 and 316.)

ART. 308.—The child having survived his father and mother, and coming to the succession of his grandfather and grandmother, even if he renounces to the succession of his said father and mother, is nevertheless bound to make restitution to his said grandfather and grandmother, of all which has been given to his said father or mother by the said grandfather or grandmother, or take less. (See Art. 306.)

ART. 309.—The fruits of the thing given by father and mother, grandfather and grandmother, either estates or rents are not to be returned only from the day the succession occurred. And if there is money given the profits are to be restored for the said time at the rate of 5 per cent. (See Art. 305.)

ART. 310.—The right and portion of the child who abstains and renounces to the succession of his father or mother, accrues to the other children, being heirs without any prerogative of seniority for the portion which accrues to them. (See Arts. 27 and 50.)

ART. 311.—Father and mother succeed to their children, born in lawful marriage, if they die without heirs of their body, to the moveables, *acquêts et conquêts* immoveables. And in default of them the grandfather and grandmother, and other ascendants. (See Arts. 313, 214 and 315.)

ART. 312.—In succession in the direct line the estate *propre* does not ascend; and the father and mother, grandfather or grandmother, do not succeed. (See the three following Articles.)

ART. 313.—But they succeed to things given by them to their children, dying without children descending from them. (See Arts. 230 and 315.)

ART. 314.—The father and mother enjoy by usufruct the property left by their children, which had been acquired by the said father and mother, and by the decease of one of them having come to one of their children, even if it was made *propre* to the said children, provided always that the said children die without any children or descendants; and after the decease of the said father and mother, who have enjoyed the said property by usufruct, the said property returns to the nearest relations of the said children from whom the said property proceeds. (See Arts. 230 and 263.)

ART. 315.—If the son purchases estates or other immoveable property, and dies leaving to his child the said estates—and that the said child dies afterwards without children or descendants from him, and without brothers and sisters—the grandfather and grandmother succeed to the said estates in full enjoyment, and exclude all others in the collateral line. (See Arts. 230 and 211.)

en ce cas le donataire est tenu rapporter seulement l'estimation d'iceux héritages ; eu égard au tems que division et partage est fait entr'eux : déduction faite des dites impenses. (Voyez l'article 48, en la fin, et le 309.)

ART. 306.—Parcèlement ce qui a été donné aux enfans de ceux qui sont héritiers, et viennent à la succession de leur père, mère, ou autres ascendans, est sujet à rapport, ou moins prendre, comme dessus. (Voyez les articles 304, 308.)

ART. 307.—Néanmoins, où celui auquel on aurait donné, se voudrait tenir à son don, faire le peut : en s'abstenant de l'hérédité, la légitime réservée aux autres enfans. (Voyez l'article 298, 316.)

ART. 308.—L'enfant ayant survécu ses père et mère, et venant à la succession de ses aïeul ou aïeule, survivant les dits père et mère, encore qu'il renonce à la succession de ses dits père et mère, est néanmoins tenu rapporter à la succession de ses dits aïeul ou aïeule, tout ce qui a été donné à ses dits père et mère par ses dits aïeul ou aïeule, ou moins prendre. (Voyez l'article 306.)

ART. 309.—Les fruits de la chose donnée par père ou mère, aïeul ou aïeule, soit héritages ou rentes, ne se rapportent, sinon du jour de la succession échue. Et s'il y a deniers baillés, les profits se rapporteront depuis le dit tems, à raison du denier vingt. (Voyez l'article 305.)

ART. 310.—Le droit et part de l'enfant qui s'abstient et renonce à la succession de ses père ou mère, accroît aux autres enfans héritiers, sans aucune prérogative d'aînesse de la portion qui accroit. (Voyez les articles 27 et 250, en la fin.)

ART. 311.—Père et mère succèdent à leurs enfans, nés en loyal mariage, s'ils vont de vie à trépas sans loirs de leurs corps, aux meubles, acquêts, et conquêts immeubles. Et en défaut d'eux, l'aïeul ou l'aïeule, et autres ascendans. (Voyez les articles 313, 311, 315.)

ART. 312.—En succession en ligne directe, propre héritage ne remonte : et n'y succèdent les père, mère, aïeul ou aïeule. (Voyez les trois articles suivans.)

ART. 313.—Toutefois succèdent es choses par eux données à leurs enfans, décédans sans enfans, et descendans d'eux. (Voyez l'article 230, en la fin, et le 315.)

ART. 314.—Les père et mère jouissent par usufruit, des biens délaissés par leurs enfans, qui ont été acquis par les dits père et mère, et par le décès de l'un d'eux advenus à l'un de leurs dits enfans ; encore qu'ils soient, et aient été faits propres aux dits enfans, au cas toutefois que les dits enfans décèdent sans enfans et descendans d'eux. Et après le décès des dits père et mère, qui ont joui des dits biens par usufruit, les dits biens retournent aux plus proches parens des dits enfans, desquels procèdent les dits biens. (Voyez l'article précédent et le suivant, le 230, en la fin, et le 263 vers la fin.)

ART. 315.—Si le fils fait acquisition d'héritage, ou autres biens immeubles, et il décède, délaissant à son enfant les dits héritages ; et le dit enfant décède après sans enfans et descendans de lui, et sans frères et sœurs, l'aïeul ou l'aïeule succèdent aux dits héritages en pleine propriété, et excluent tous autres collatéraux. (Voyez l'article 230 en la fin, et le 311.)

ART. 316.—Nobody can be heir who does not choose. (See the following Art. and 307.)

ART. 317.—And if any person takes the property of a deceased person, or any part of it whatever, without having any other quality or right to take the said property or any part of it, he makes an act of heirship, and by so doing he obliges himself to pay the debts of the deceased. And supposing there is anything due him by the deceased he ought to ask for it, and prosecute for the recovery of the same; otherwise if he takes it of his own authority, he makes an act of heirship. (See Arts. 6 and 105.)

ART. 318.—At the moment of the death the nearest heir who is capable of succeeding, is in possession. (See Arts. 109, 256 and 258.)

ART. 319.—In the direct line representation takes place *ad infinitum* in every degree whatsoever. (See Arts. 308, 311, 315 and 324.)

ART. 320.—In the collateral line representation takes place when the nephews or nieces come to the succession of their uncle or aunts, with the brothers and sisters of the deceased; and in case of such representation the representatives succeed by roots *per stirpes*, and not share and share alike *per capita*. (See Arts. 323, 326 and 328.)

ART. 321.—But if the nephews in like degree take in their own right and not by representation, they succeed *per capita* and not *per stirpes*, so that the one does not take more than the other. (See Arts. 322, 327, 228, 332 and 339.)

ART. 322.—But the males coming from a daughter and succeeding as aforesaid by representation do not take any thing in the fiefs left by the uncle and aunt at their decease, more than the mother would have done, coming to the succession with her brothers. (See the preceding Art. and Arts. 25 and 326.)

ART. 323.—And if in the said collateral succession there are *fiefs*, the children of the brothers do not exclude their aunts, sisters of the deceased, but the aunts succeed in their own right as being the nearest with the children of the brothers, and if there are many children of the brothers, they succeed only as one head with their aunts. (See Art. 25, and 320 and 335.)

ART. 324.—The children of the eldest son, males or females, surviving their father, and coming to the succession of their grandfather or grandmother, represent their father in right of seniority, and if there are only daughters, they represent their father altogether under one head in the right of seniority, and without right of seniority between themselves. (See Arts. 31, 13 and 19.)

ART. 325.—In the collateral line, the nearest relation of the child deceased without heirs succeed him with respect to the moveables and *acquêts* immoveable, without excluding the brothers and sisters coming by representation as aforesaid. (See the following Art. and Arts. 320 and 338.)

ART. 326.—And with respect to *propres* estates, the relations who are the nearest of the side and line from whom the said estates have come to the deceased succeed to him, although they are not the nearest relations of the said deceased, / except in fiefs, wherein the males exclude the females in equal degree / without

ART. 316.—Il ne se porte héritier qui ne veut. (Voyez l'article suivant, et le 307.)

ART. 317.—Et néanmoins, si aucun prend et appréhende les biens d'un défunt, ou partie d'iceux, quelle qu'elle soit, sans avoir autre qualité ou droit de prendre les dits biens ou partie, il fait acte d'héritier, et s'oblige en ce faisant à payer les dettes du défunt. Et supposé qu'il lui fût dû aucune chose par le défunt, il le doit demander, et se pourvoir par justice : autrement s'il prend de son autorité, il fait acte d'héritier. (Voyez l'article 6, en la fin, et le 105.)

ART. 318.—Le mort saisit le vif : son hoir plus proche et habile à lui succéder. (Voyez l'article 169, en la fin, et les 256, 258.)

ART. 319.—En ligne directe représentation a lieu infiniment, et en quelque degré que ce soit. (Voyez les articles 308, 311, en la fin ; 315, 324.)

ART. 320.—En ligne collatérale représentation a lieu quand les neveux ou nièces viennent à la succession de leur oncle ou tante, avec les frères et sœurs du décédé. Et au dit cas de représentation, les représentans succèdent par souches, et non par têtes. (Voyez l'article 323, et en la fin des 326, 328.)

ART. 321.—Mais si les neveux en semblable degré viennent de leur chef, et non par représentation, succèdent par têtes et non par souches, tellement que l'un ne prend non plus que l'autre. (Voyez les articles 327, 328, 332, 339.)

ART. 322.—Toutefois les mâles venant d'une fille, et succédant, comme dit est, par représentation, ne prennent aucune chose es Fiefs délaissés par le trépas de leur oncle et tante, non plus que leur mère eût fait, venant à succession avec ses frères. (Voyez l'article précédent, le 25 et le 336, au milieu.)

ART. 323.—Et si en la dite succession collatérale il y a Fiefs, les enfans des frères n'excluent leurs tantes, sœurs du défunt, ainsi y succèdent les dites tantes de leur chef, comme étant les plus proches avec les enfans des frères. Et s'ils sont plusieurs enfans de frère, succèdent seulement pour une tête avec leur tante. (Voyez l'article précédent, et les 25 et 320, 335.)

ART. 324.—Les enfans du fils aîné, soit mâles ou femelles, survivans leur père, venans à la succession de leur ayeul ou ayeule, représentent leur dit père au droit d'aînesse. Et s'il n'y a que filles, elles représentent leur père toutes ensemble pour une tête, au dit droit d'aînesse, et sans droit d'aînesse entr'elles. (Voyez l'article 4, 13, 19.)

ART. 325.—En ligne collatérale, les plus proches parens d'un enfant décédé sans hoirs, lui succèdent quant aux meubles et acquêts immeubles : sans exclure toutefois les enfans des frères et sœurs, venans par représentation, comme il est dit ci-dessus. (Voyez l'article suivant et les 320, 338.)

ART. 326.—Et quant aux propres héritages, lui succèdent les parens qui sont les plus proches du côté et ligne dont sont venus et échus au défunt les dits héritages, encore qu'ils ne soient plus proches parens du défunt. Hors et excepté, qu'en fiefs le mâle exclut les femelles en pareil degré : sans aussi exclure les

excluding the children of the brothers and sisters coming by representation as above mentioned. (See Arts. 25, 94, 141, 230, 320, 329 and 331.)

ART. 327.—The heirs of a deceased in the collateral line separate and divide equally between them by heads and not *per stirpes*, the property and succession of the said deceased, as well moveables as estates not holden in fief. /

ART. 328.—Except the children of a brother and sister who divide and make together one head in the place of the father and mother, if they succeed with their uncle and between them, they divide equally. (See Arts. 320 and 321.)

ART. 329.—And they are reputed of the side and line even if they are not descended of him who has acquired the estate. (See Arts. 141, 230 and 314.)

ART. 330.—And if there are no heirs of the side and line from whom the said estate comes, it belongs to the nearest relation fit to succeed, of the other side and line in any degree whatever. (See the preceding Art. and Arts. 167 and 326.)

ART. 331.—In the collateral line the estates holden in fief are separated and divided among co-heirs without right or prerogative of birth. (See Arts. 19, 326 and 327.)

ART. 332.—The heirs of the deceased in the same degree as well the heirs to the moveables as immoveables are holden personally to pay and discharge the debts of the succession, each person paying a part and portion as he is heir to the deceased whom they succeed equally. (See Arts. 321 and 334.)

ART. 333.—If there are possessors of estates which have belonged to the deceased, the same being under obligations and mortgaged for debt by the said deceased, each of the heirs is bound to pay the whole, reserving his recourse against his co-heirs. (See Arts. 99 and 101.)

ART. 334.—And when one succeeds to the moveables, *acquêts et conquêts*, the others to the *propres*, or if they are donees or universal legatees, they are bound to contribute among themselves towards the payment of the debts, each one for such part and portion as he has received, among whom the first-born in the direct line are now comprised, and they are not held for the personal debts for a greater proportion than the said co-heirs in respect to their right of seniority. (See the following Art. and Arts. 13, 14 and 179.) /

ART. 335.—In the collateral succession when there are males and females succeeding to fiefs and *roture*, each one pays in proportion to the profit he receives. (See the preceding Art. and Art. 323.)

ART. 336.—The relations of bishops and other secular persons succeed to them. (See Art. 318.)

ART. 337.—Monks or nuns professed *profès* do not succeed to their relations, nor the monastery for them. (See Art. 158.)

ART. 338.—The uncle succeeds to the nephew before the cousin german. (See 318 and 224.)

enfants des frères et sœurs venans par représentation, comme dessus. (Voyez l'article 25, les 94 et 141 en la fin, 230 au milieu ; 320, 329 et 331.)

ART. 327.—Les héritiers d'un défunt en ligne collatérale, partissent et divisent également entr'eux par têtes, et non par souches, les biens et succession du dit défunt, tant meubles qu'héritages, non tenus et mouvans en fief. (Voyez l'article 25, en la fin, 320, 321, 323 et 331.)

ART. 328.—Excepté les enfans des frères et sœurs, qui partissent, et font tous ensemble une tête au lieu de leur père et mère, s'ils succèdent avec leur oncle, et entr'eux ils partissent également. (Voyez les dits articles 320 et 321.)

ART. 329.—Et sont réputés parens du côté et ligne, supposé qu'ils ne soient descendus de celui qui a acquis l'héritage. (Voyez les articles 141 en la fin, 230 au milieu, et 314 aussi en la fin.)

ART. 330.—Et s'il n'y a aucuns héritiers du côté et ligne, dont sont venus les héritages, ils appartiennent au plus prochain à succéder de l'autre côté et ligne, en quelque degré que ce soit. (Voyez l'article précédent, les 167, 326 au milieu.)

ART. 331.—En ligne collatérale, les héritages tenus et mouvans en fief, se partissent et divisent entre co-héritiers, sans droit ou prérogative d'aînesse. (Voyez les articles 19, 326 et 327.)

ART. 332.—Les héritiers d'un défunt en pareil degré, tant en meubles qu'immeubles, sont tenus personnellement de payer et acquitter les dettes de la succession, chacun pour telle part et portion qu'ils sont héritiers d'icelui défunt, quand ils succèdent également. (Voyez les articles 321 et 334.)

ART. 333.—Toutefois s'ils sont détenteurs d'héritages qui ayent appartenu au défunt, lesquels ayent été obligés et hypothéqués à la dette par le dit défunt, chacun des héritiers est tenu payer le tout, sauf son recours contre ses co-héritiers. (Voyez les articles 99 et 101.)

ART. 334.—Et quand ils succèdent les uns aux meubles, acquêts et conquêts, les autres aux propres, ou qu'ils sont donataires, ou légataires universels, ils sont tenus entr'eux contribuer au payement des dettes, chacun pour telle part et portion qu'ils en amendent. En quoi ne sont compris les aînés en ligne directe, lesquels ne sont tenus des dettes personnelles en plus que les autres co-héritiers, pour le regard de leur dite aînesse. (Voyez l'article suivant, et les 13, 14 et 179 au commencement.)

ART. 335.—En succession collatérale, quand il y a mâles et femelles succédans en fief et rôtur, chacun paye pour portion de l'émolument. (Voyez l'article précédent et le 323.)

ART. 336.—Les parens et lignagers des Evêques et autres gens d'Eglise, séculiers, leur succèdent. (Voyez l'article 318.)

ART. 337.—Religieux et Religieuses profès, ne succèdent à leurs parens, ni le Monastère pour eux. (Voyez l'article 158.)

ART. 338.—L'oncle succède au neveu avant le cousin germain. (Voyez les articles 318 et 225.)

ART. 339.—The uncle and the nephew of a deceased person who has left neither brothers nor sisters succeed equally, as being in the same degree, in which case there is no representation. (See Arts. 321 and 332.)

ART. 340.—Brothers and sisters, if they are only of the same father or mother, succeed equally with other brothers and sisters of the father and mother to their brothers and sisters, for the moveables, *acquêts et conquêts* immoveable. (See the following Art. and Arts. 325 and 326.)

ART. 341.—What is above mentioned takes place with regard to uncles and other relations of the collateral line who are related only to one side. (See the preceding Art.)

ART. 342.—The heir in the direct line who becomes heir with the benefit of an inventory, is not excluded by another relation who is only heir simple. (See the following Art. and Art. 302.)

ART. 343.—The minor who is only simple heir cannot exclude the heir with the benefit of inventory who is in a nearer degree. (See the preceding Art.)

ART. 344.—The heir with the benefit of inventory or a curator to the vacant property of a deceased, cannot sell the moveable property of the succession or curatorship without publishing the sale before the principal doors of the parish church where the said deceased lived after divine service, and by leaving an advertisement on the door of the house of the deceased. (See Arts. 34, 151 and 167.)

253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.

ART. 339.—L'oncle et le neveu d'un défunt qui n'a délaissé ni frère ni sœur, succèdent également, comme étant en même degré ; et sans qu'au dit cas il y ait représentation. (Voyez l'article 321 et le 332.)

ART. 340.—Frères sœurs, supposé qu'ils ne soient que de père ou de mère, succèdent également avec les autres frères et sœurs de père et de mère, à leur frère et sœur, aux meubles, acquêts et conquêts immeubles. (Voyez l'article suivant et les 325 et 326.)

ART. 341.—Ce que dessus a lieu aux oncles et aux parens collatéraux qui ne sont joints que d'un côté. (Voyez l'article précédent.)

ART. 342.—L'héritier en ligne directe, qui se porte héritier par bénéfice d'inventaire, n'est exclu par autre parent qui se porte héritier simple. (Voyez l'article suivant et le 302.)

ART. 343.—Le mineur qui se porte héritier simple, ne peut exclure l'héritier par bénéfice d'inventaire, qui est en plus proche degré. (Voyez l'article précédent.)

ART. 344.—L'héritier par bénéfice d'inventaire, ou Curateur aux biens vacans d'un défunt, ne peut vendre les biens meubles de la succession ou Curatelle, sinon en faisant publier la vente devant la principale porte de l'Eglise de la Paroisse où le défunt demeurait, à l'issue de la Messe Paroissiale : et délaissant une affiche contre la porte de la maison du défunt. (Voyez les articles 34, 151 et 167.)

INDEX—VOL. I.

	<i>Page.</i>
INTRODUCTION,	3
Study of the Law ; Criminal Law ; Jurors ; Justices of the Peace ; Judges ; Members of the National Councils ; Profession of the Law ; Advocates ; Plan of Studies ; Of the Law ; Customs ; Statutes, Capitularies, Ordinances, Edicts, and Arrêts ; Division of Statutes ; Personal Statutes ; Real Statutes ; Universal Statutes ; Special Statutes ; Jurisprudence ; Justice ; Division of Law ; Law of Nature ; Of the Law of Nations ; Public Law ; Civil Law ; General Rules of the Roman Law to make and expound Written Laws ; General Rules to be observed in the construction and in expounding Statutes in the English Constitution ; Summary of the British Constitution ; Summary of the Constitution of Scotland.	
CHAPTER I.—ORIGIN OF THINGS—CONFLICTING DOCTRINES,.....	19
Uncertainty of Profane History before Homer ; Homer, his Iliad and Odyssey ; first mention of Political Institutions amongst Men ; Hésiod, his Theogony ; first Theological Book of Paganism ; The principal Events and Heroes taken from the Mosaic History ; A few Parallels, (Chaos, Deluge, Noah, Deucalion, Noah and Saturn, Moses and Bacchus, Canaan and Mercury, Abraham and Athanas, Isaac and Phrixus, &c.) ; Of the Books of the Egyptians ; Of the Sacred Books of the Romans ; Of the Sibylline Books ; Doctrines of the Modern Philosophers ; Judaism and the Books of Moses.	
CHAPTER II.—EVENTS OF THE FIRST AGE OF THE WORLD,.....	29
CHAPTER III.—EVENTS OF THE SECOND AGE OF THE WORLD,.....	30
Family of Japheth ; Family of Ham ; Family of Shem.	
CHAPTER IV.—EVENTS OF THE THIRD AGE OF THE WORLD,.....	33
CHAPTER V.—EVENTS OF THE FOURTH AGE OF THE WORLD,.....	34
Of the Written Law and the Laws of Nature ; Foundation of the Written Law ; Text of the Decalogue.	
CHAPTER VI.—EVENTS OF THE FIFTH AGE OF THE WORLD,.....	35
Solomon, or the Temple completed ; His Wisdom and Commerce ; His Downfall ; Rehoboam, and the loss of ten Tribes ; His Nation falls into Servitude ; Great Events in Western Asia ; Athenians ; Egyptians ; Phœnicians ; Progress of History, of the Laws and Religion during this Age ; History ; Coincidence of the Sacred and Profane Histories ; Laws of the Hebrews.	
CHAPTER VII.—PARTICULAR LAWS AND CUSTOMS OF THE HEBREWS, AS FOLLOWED BEFORE AND SINCE THEIR DISPERSION,.....	40
Laws of the Hebrews ; Of the Rabbins, and their Authority ; Of Excommunications ; Contracts, Writings, Notaries ; Judges ; Marriage ; Solemnities of Marriage ; Divorces ; Consistory, or Senate of the Jews ; Of the Year and Month, Sabbath, and Holidays.	
CHAPTER VIII.—LEGISLATORS AND LAWS OF THE MOST CELEBRATED NATIONS,.....	45
The two Mercuries, and the Laws of the Egyptians ; Distribution of Justice ; Minos and the Laws of the Cretans ; Lycurgus, and the Laws of Sparta ; Draco and Solon, and the Laws of Athens ; Principal Laws of Solon.	
CHAPTER IX.—STATE OF RELIGION, FROM THE DEATH OF SOLOMON TO THE CHRISTIAN ERA,.....	50
Rehoboam, and the Idolatry of the Ten separated Tribes of Israel.	
CHAPTER X.—OUTLINES OF THE RELIGIOUS, POLITICAL, AND LEGAL HISTORY OF THE ROMANS,.....	55
Remus and Romulus, their Origin ; Exposed on the Borders of the Tiber ; They restore their grandfather to the Throne of Alba ; They look for a sheltering place ; Foundation of Rome—Death of Remus ; A Form of Government is Established ; The Romans obtain wives ; The Sabines become the Allies of the Romans ; Romulus murdered ; His Apotheosis ; Numa Pompilius ; Tullus Hostilius ; Ancus Marcius ; Tarquinius Priscus ; Servius Tullius ; Tarquin the Proud ; Downfall of Royalty.	

	<i>Page.</i>
CHAPTER XI.—OUTLINES OF THE HISTORY OF ROME,.....	58
Consular Government; Establishment of Tribunes; Decemvirs Established; Principal Laws of the Papyrian Code; Division of the Laws of the Twelve Tables; A few of the Principal Laws of the Twelve Tables; The Decemvirs Expelled; Battle of Cheronæ; First exploits of Alexander; Alexander and Darius; The Empire of Alexander is divided; All yield to the Romans; First step towards the downfall of the Roman Empire; Julius Cesar subdues the Gauls and almost all the World; He is murdered; Battle of Actium; Augustus Cesar; General Peace; The Temple of Janus is shut; Jesus Christ comes into the world.	
CHAPTER XII.—EVENTS OF THE SEVENTH AND LAST AGE OF THE WORLD,.....	66
Birth of Christ; Death of Herod; Death of Augustus; Tiberius; Formation of the Church; Death of Christ; Caligula and Claudius; Council of Jerusalem, its Promulgation; Nero; Vespasian; Titus; Jerusalem Burned—Domitian, his Persecutions; Nerva and Trajan; Adrian, he rebuilds Jerusalem, but banishes the Jews; Antonius Pius, and Marcus Aurelius; Commodus and Pertinax; The Empire put up at Auction—a Lawyer buys it; Severus Africanus, and Heliogabalus; Alexander Severus; Maximilian; The Senate appoints four Emperors; The Empire is inundated by Germanic Tribes; Divided amongst tyrants; The Franks grow formidable; Tacitus; Probus; Diocletian and Maximilian; Constantius Chlorus and Galerius; Constantine; Galerius, his Persecution and his Death.	
CHAPTER XIII.—STATE OF THE EMPIRE DURING AND AFTER THE REIGN OF CONSTANTINE,.....	72
Constantine embraces Christianity; Julian's Revolt and Apostacy; Jovian; Valentinian; Gratian; Theodosius, the delight of the World; Arcadius and Honorius; The Franks get possession of the Gauls; The Anglo-Saxon Race Invades the South of Great Britain; Rome becomes a prey to the Barbarians; Clovis overthrows the Roman Power in the Gauls; Justinian, his Death; Charlemagne, the Franks, and the Saxons.	
CHAPTER XIV.—HISTORICAL SKETCH OF THE CONTINUATION OF THE ROMAN LAWS, ...	76
Of the Roman Laws following those of the Twelve Tables; Of the Plebiscitum and Agrarian Laws; State of the Roman Jurisprudence under Julius Cesar; Of the Lex Regia, and the Laws of the Emperors; Of the Gregorian and Hermoginian Codes; Of the Theodosian Code; Of the Compilation of Justinian; Of the Code; Of the Digest; Of the Institutes; Of the Correction of the Code and of the Novels.	
CHAPTER XV.—GOTHIC LAWS,.....	82
Of the Celtic, Germanic and Gothic Nations; The Druids; Their Sacrifices; Their Doctrines; Authorities; The Bards; Political Laws; Lord and Vassal; Homage.	
CHAPTER XVI.—CESAR'S FIRST INVASION OF BRITAIN,.....	85
Of the Britons; Origin of the Britons; Their Manners; Their Religion; Government of the Britons; Fate of Caractacus; Reduction of Anglesy; Britain abandoned by the Romans; The Natives invite the Saxons to assist them.	
CHAPTER XVII.—GENERAL PRINCIPLES OF THE LAWS OF ENGLAND,.....	90
Introduction; Common Law; Lex non Scripta; Civil Law; Common Law; Statute Law; Saxon Laws; Saxon Lawgivers; Condition of the Saxon People; State of Landed Property; Thaneland; Origin of the Feudal System; Bockland; Folkland; Descents; Alienation; Testaments; Method of Conveyance.	
CHAPTER XVIII.—THE SAXONS,.....	97
Division of the Country; Counties; Earl; Hundreds; Tithings; Friburgh or Frank-pledge; Tithingman; Ecclesiastical State; Union of the Secular and Ecclesiastical Powers; Tithes; Military State; Administration of Justice; Officers of Justice; Alderman; Gerefa or Reve; Courts of Justice; Tolemote; Hallmote; Hundred Gemote; Seyregemote; Witenagemote.	
CHAPTER XIX.—JUDICIAL PROCEEDINGS AMONG THE SAXONS,.....	104
Judicial Proceedings; Ordeal; Trial by Compurgators; Trial by Witnesses; Criminal Cases; Grand Jury; Penalties and Offences; Murder; Stealing; Outlaws; Breach of the Peace; Pax Regis; Defamation; Witnesses to Contracts; Sanctuary; Abjuration; Hue and Cry.	
CHAPTER XX.—PROGRESS OF THE LAWS FROM THE NORMAN CONQUEST, ANNO DOMINI 1066, TO THE CONFIRMATION OF MAGNA CHARTA,.....	112
Introduction; Confirmation of the Saxon Laws; Feudal Tenures; Earls; Sheriffs; Courts; Separation of the Secular from the Ecclesiastical Judicature; Trial by Battle; Trial by Jury; Pleadings in French; Doomsday Book; Charter of Henry I.; Abolition of Moneyage; Feudal Burthens lightened; Descents Curia Regis; Curia Baronis; Reunion of the Secular and Ecclesiastical Jurisdictions; Placita; Trial by Jury; Charters of Stephen; Introduction of the Civil and Canon Law; Comparison between the Civil Law and Common Law; Introduction; Charter of Henry I. Confirmed; Foreign Codes of Feudal Law; Lex Salica; Longobardorum; Capitu-	

	<i>Page.</i>
laria; Grand Coutunier; Assizes de Jerusalem; Feudal Law in England and Scotland; Glanville; Regiam Majestatem; Law of Landed Property since the Conquest; Knight's Fees; Knight's Service; Socage Tenure; Incidents to Knight's Service; Homage; Fealty; Warranty; Reliefs; Heriots; Escheat; Serjeanties; Frankalmoigne; Dower; Maritagium; Courtesy; Succession and Descent; Mode of Conveying Lands; Livery and Seisin; Charters; Chirographs; Indentures; Feoffment; Release; Demise; Testaments; Introduction; Laws of Oléron; Weights and Measures; Introduction; Magna Charta; Arbitrary Consecration of Tithes.	
CHAPTER XXI.—MAGNA CHARTA, BILL OF RIGHTS, AND THE PRINCIPAL ENACTMENTS OF THE STATUTE LAW,.....	135
Confirmation of the Great Charter; Magna Charta and Charta de Foresta separated; Renewal of the Confirmation; Cancelling of all the Charters; Their Solemn Reconfirmation; Principal Contents of Magna Charta, from Manuscripts; Liberty of the Church; Liberty of the Subject; Delays in the Administration of Justice Prohibited; Exactions Prohibited; Tenures; Alienation Restricted; Mortmain; Forms of Administering Justice; Courts; King's Bench; Justices of Assize and Nisi Prius; County Courts; Frivolous Prosecutions Prevented; Writ de Odio et Atia; Amercements; Coroner; Constable; Bailiff; Suspending Laws; Levying Money; Petitioning the King; Standing Army; Keeping of Arms; Freedom of Elections; Freedom of Speech in Parliament; Excessive Bail Prohibited; Impeachment of Jurors; Grants and Promises; Proceedings in the Eyre; Grand Jury; Petit Jury; Abolition of the Ordeal; Introduction; List of the Statutes; Law of Entail; Estates in Tail; Ecclesiastical Property protected; Warranty; Fines; Administration of Justice; Judicature in Council and in Parliament; Justices of Assize and Nisi Prius; Justices of Oyer and Terminer; Justices of Gaol Delivery; Ecclesiastical Jurisdiction; Benefit of Clergy; Writ of Dower; King's Councils; Privy Council; Magnum Concilium Regis; National Councils; Parliament; Constitution of Parliament; Attendance in Parliament; Frequency of Parliaments; Manner of Assembling Parliaments; Sessions of Parliament; Opening of Parliament; Humble Address of the Speaker; Petitions of the Commons; Subsidies; Question of General Policy brought before Parliament; House of Lords, a Court of Judicature; Criminal Jurisdiction; Impeachment by the Commons; Liberty of Speech; Law of Landed Property; Commission of Nisi Prius; Justices of the Peace; Quarter Sessions; Pleadings in English; Limitations and Remainders; Devises; Warranty; Action of Covenant; De Ejectione Firmæ; Action of Trespass and on the Case; Replevin; Trial per Pais or by Jury; Challenging; Treason; Petit Treason; Homicide; Chance Medley; Murder; Arson; Theft; Burglary; Larceny; Rape; Mayhem; Striking a Clerk; Striking in Courts; Usury; Forestalling; Felony; Standing Mute; Perjury; Accessories; Indictments; Hue and Cry; Pleas of Autrefois Acquit and Autrefois Attaint; Privileges of Married Women.	
CHAPTER XXII.—STATUTE LAW, FROM THE REIGN OF HENRY VIII. TO THE 14TH OF GEO. III., A. D. 1774,.....	192
Religion; Ecclesiastical Polity; Election of Bishops; Style assumed by the King; Dissolution of Monasteries; Lawful Marriage Defined; Statute of Uses; Jointures; Devises; Leases; Partition; Descent tolling entry; Gifts to superstitious uses; Admiralty; Limitations of actions; Restitution of Goods in Indictments; Penal Laws; Malicious Mischief; Statute of Uses; Lease and Release; Personal Actions Assumpsit; Statutes; Reports; Reformation; Sacrament; Abolition of Chantries; Acts of Uniformity; Book of Common Prayer; Nonconformists; Marriage of the Clergy; Brawling in a Church or Church Yard; Poor Laws; Tithes; Loss of Dower for Treason and Felony; Re-establishment of Popery; Poor Laws; Benefit of Clergy; Witnesses for the prisoner; Reformation; Common Prayer; Heresy defined; The Thirty-nine Articles; Papal Power abolished; Court of High Commission; Congé d'Elire; Gifts to Charitable Uses; Enrolment of Fines; Informers and compounding information; Criminal Law; Canonical Purgation abolished; Leases by Ecclesiastical Persons; Privileges of Parliament; Abolition of Sanctuary and Abjuration; Larceny in women; Convention of Parliament; Independence of the King; The King declared to be the Generalissimo of the Military and Naval Forces of the country; Parliament; Oath of Allegiance; Abolition of Military Tenures; Excise; Post Office; Corporation and Test Acts; Habeas Corpus; Writ de Hæretico Comburendo; Navigation; Statute of Frauds; Parole Conveyance; Nuncupative Wills; Statute of Distributions; Manner of voting supplies in this reign; Right of imprisoning; Tenures; Copy Holds; Title by purchase; Common Assurances; Courts Martial; New Trials; Succession to the Throne determined by Parliament; Statutes of William and Mary; Bill of Rights; Mutiny Act; Exclusion of Catholics from the Throne; Counsel allowed Prisoner on an indictment of Treason; Appointment of the Judges; Arbitration Copyright; Pressing Seamen; Union of England and Scotland; Marriage Act; English Language; The Quebec Act, 1774; Abolition of the Slave Trade and of the Trial by Battle; Improvements of the Criminal Law.	

INDEX—VOL. II.

GENERAL INTRODUCTION.—RELIGIOUS, CIVIL, CRIMINAL, AND MILITARY LAWS OF THE NATIVES, STILL IN FORCE IN THE CANADIAN FORESTS IN THE WEST,.....	1
Introduction; Of America; Its Mountains; Its Rivers; Its Lakes; Its Plains; Its Discovery by Modern Europeans; Attempt at colonization; Mr. DeChamplain's beginning; an Indian Engagement; By what Nations America was possessed at the time of the Discovery; By what Nations possessed at this time; By whom and in what manner America was peopled; Scythian Customs, Mosaic Laws, and the Doctrines of Confucius and Zoroaster found in America; Of the Esquimaux; Signs of Christianity found in America; Madoc's Expedition; Robertson's Opinion; Conjectures respecting the origin of the Iroquois and Hurons; No information can be had from the Indians; Character of the Indians; Their Language; Their Religion; Temples; Iroquois, Vestals and Hermits; Of War; Government; Tribes and Families; Noble Families; Chiefs; Agoanders or Ephores; Senate of Ancients; Warriors; Councils; Councils of Ancients; Civil Matters; Criminal Affairs; State Concerns; Porcellena Shell or Wampam; Public Treasury; Solemn Assemblies; Atheron Dance; Satiric Dance; The Calumet; Calumet Dance; Its Similarity with the Caduceus of the Egyptians; War Pipe; Commerce; Distinction of Families, Laws of Marriage; Degrees of Relationship; Marriage Solemnities; Celebration of Marriage; Divorce; Death; Mourning; Conclusion; Colonization; Death of the Missionaries; Sir Alexander M'Kenzie's Observations; Sir Francis Bond Head's Reports to the Secretary of State for the Colonies; Statistical Tables of the Indian Tribes.	
CHAPTER I.—OF PERSONS,.....	37
Introduction; Definition of the word; How considered by the Custom; Marriage; Status of Marriage; Constitution of Marriage; Rights and Effects of Marriage; Divorce: Foreign Divorces; Age of Majority; Emancipation; Tutorship; Curatorship; Aliens; Aliens by the Laws of Lower and Upper Canada, under the French Kings; Aliens by the Laws of Canada by Provincial Statutes, in both Provinces; Statutes and their Contents by Articles; Judicial Decisions; What is an Alien; Status and Consequences; Aliens by the Laws of England; National Domicil; Definition; Domicil of Nativity; Of an Illegitimate Child; Of Minors and of Persons under the authority of others; Of Married Women; Of a Married Man having his Family in one place and doing buisness in another; Capacity of Persons; Governed by the Laws of his Domicil; Age; Married Women; Effect of the Change of Domicil in case of Community; Decision of the English Courts; Lord Eldon's Opinion; Rules adopted by the French Jurists; Decisions of the Supreme Courts of Louisiana; Guardianship by the Roman Law; Property of the Ward; Guardianship by the Laws of England; Opinion of Lord Eldon; Executors and Administrators by the Laws of Nations.	
CHAPTER II.—OF THINGS, AND THE DIFFERENT MODIFICATION OF PROPERTY AND ESTATES,.....	50
Estates and Things; Things in general; Things which are common; How considered by the Custom; Division of Things; Moveables; Obligations; Actions; Perpetual Rents; Seigniorial Rents; Things which have no Character; Materials proceeding from Demolition; Meaning of the word Furniture; Moveable Goods; Immoveables; Definition of the word; Moveables and Immoveables by destination; Buildings; Trees and Fruits; Things placed by the owner for the service of the inheritance; Manure; Bee Hives; Quarries; Moveables by Fiction; Immoveables by Fiction; Ownership and its Modifications; General Dispositions; General Principles; Division; Rights of the Proprietor; Property of the Soil and its consequences; Of the Right of Accession; What is Good Faith in a Possessor; Alluvions; Derelictions; Land carried away and identified; Islands and Sand Bars; Decision of the Courts of King's Bench and Provincial Court of Appeals; Rivers; they are vested in the Crown for public use; Seigniors have a Right in the Soil and Servitude on the water.	
CHAPTER III.—SERVITUDES,.....	60
Definition of the word; Division; Personal Servitudes; Usufruct; Obligations of the Proprietor; Rights and Obligations of the Usufructuary; Civil Fruits; Rents and Annuities, when due; Trees, Sand, Stones, Mines, Quarries, how to be used by the Usufructuary; Alluvions, Islands, Treasure Trove, Rights of Servitude to be enjoyed by the Usufructuary; He may dispose of his right; Obligations of the Usufructuary; He must obtain possession; He must give security; He must make the necessary repairs; Cannot alter the destination; When consisting of Herds; Expiration	

of the Usufruct; Use and Habitation; Real Servitudes; Subdivision; Servitudes which originate from the natural situation of the place; Servitude imposed by Law; Particular Services; Common Walls; Walls not in common Privilege of the Proprietor to abandon a Partition Fence; Of a common Wall to demolish and erect; To raise it; How to render a Wall a common Wall; Responsibility of the Masons; Boundary Enclosures in the open country; Distance of Intermediary Walls; Stables; Chimnies and Hearths; Ovens, Forges, and Furnaces; Wells and Necessaries; Ploughing and Manuring against a Wall; Sinks, Sewers, Ditches, &c.; Cases in Dispute; Appointments of Experts; Report how to be made and delivered; Of the Right of Lights on the Property of the Neighbour; Windows and Lights; Lights and Views; The manner of carrying off Rain from the Roofs; Of the right of Passage; To whom belongs the Right of imposing a Servitude; How Servitudes are extinguished.	Page.
CHAPTER IV.—SUCCESSIONS—BY THE LAWS OF CANADA AND BY THE LAWS OF ENGLAND,.....	71
General Principles; Definition; It includes augmentations and charges accrued since the death; Different sorts of Successions; Testamentary; Legal; Different sorts of Heirs; Unconditional and Beneficiary; Degrees of Consanguinity; Direct Line; Collateral Line; Equality of Division; Variance in the Common and Civil Law; Representation; Ad Infinitum in the Direct Descending Line; None in the Ascending Line; Restricted in the Collateral; No regard to Full Blood Exception; Moveables and Acquests; How reputed of the Line; Ascending Line; Important Rules to be observed before deciding who inherits; Irregular Successions; Law unde vir et uxor; Opening of Successions; Rules when it is not known who died the first, Acceptance of Successions; Effect of the Acceptance; Tacit or Express Acceptance; Acceptance of a Married Woman; Incapacity or unworthiness of being Heirs; Persons unworthy of inheriting; Those who are incapable of inheritance; General Maxims common to all Successions; Liberty of Renouncing; The quality of Heir and Legatee, incompatible; Payment of Debts; Exception in the Succession of Fiefs; Of Collations; What Collation is, and by whom due; Children accepting the Succession of their Ascendants, must collate; Those who accept by representation of their Ancestors; Rule in favour of Donees; Fruits and Interests must be collated; Legatees are not subject to Collation; To whom the Collation is due, and what things are subject to it; Benefit of Inventory by the Roman Law; Introduction; By the French Law; solemnities by the Civil Law; Unconditional and Beneficiary Heirs; Formalities by the Laws of Canada; Amount of Security; English Rules of Successions to real Property; Inheritances descend; Male issue is preferred; The Eldest male Inherits alone; He represents the Ancestors; Failing Lineal Heirs Collaterals are called; The nearest of the whole Blood; Male stocks preferred; Consequences resulting from these Rules.	
CHAPTER V.—MATRIMONIAL COMMUNITY,.....	90
What is meant by the words <i>Communauté de Biens</i> , between Married Persons; How and when contracted; Of what consists; General Rules; Charges of the Community; Dissolution of the Community; Acceptance of the Wife; Renunciation by the Wife; Continuation of the Community; Continuation in case of a second or other Marriages; Legal difference by the English Jurisprudence; Power of the Husband; Consequence of this Rule; The Husband becomes liable for all the Debts of the Wife; He becomes Master of her Personal Property; He has the Freehold of her Real Estates during their Joint Lives; There is no Community of Property between them; The Wife cannot dispose of her property nor make an effectual Will; The same in the American States governed by the Common Law.	
CHAPTER VI.—DOWER,.....	96
Dower; Of what composed the Customary Dower; When there are Children; Rule in case of death of Children; Prefix Dower; When composed of Rents or Money; In case of a Mutual Donation; It is the Wife's during her lifetime only; From the day of the death of the Husband; Delivery; Maintenance of the Property; It is the Property of the Children; Cannot be Heirs of the Father and have Dower also; English Rules; Tenant in Dower, what it is; She must be the actual Wife; Of what the Dower is composed; Seisin; Species of Dower; A Widow may be barred of her Dower.	
CHAPTER VII.—LINEAL REDEMPTION, OR REDEMPTION BY ONE OF THE FAMILY,.....	101
General Outlines; Cases in which the Right of Redemption may be claimed; Time when the Action of Redemption must be commenced.	
CHAPTER VIII.—OF PRESCRIPTION,.....	103
Prescription; Definition of the word; Prescription of Ten and Twenty Years; Who are reputed present; Prescription of Thirty and Forty Years; Action of Redemption; Trouble in the Possession; Action of Physicians; Action of Servants and	

Page.

Labourers; Of Tavern Keepers; Action for the Payment of Rent; Action of Re-
cision; Particular Rule for the Payment of Rent; Prescription of Three Years; Of
Promissory Notes; Action of Warranty; Action of Warranty of Undertakers; By
what Law to be decided; Good Faith; Interruption of Prescription; Law for the
public good; Prescription by the Laws of England; Definition; Good Faith;
Prescription by the Common Law; Title required; Things not liable to Prescrip-
tion; Civil or Legal Interruption; Time required to Prescribe; Rule for computing
Time; Who is reputed present; Various Prescriptions.

CHAPTER IX.—DONATIONS, INTER VIVOS,..... 110

Definition; Capacity to dispose and receive; Acceptation; Incapacities; Formali-
ties; Donation between Married Persons; Prohibitory Rules; Exceptions; By the
Laws of England; Definitions and Rules; Registration; Cannot be revoked except
in some cases; Capacity of the Giver; Personal Things.

CHAPTER X.—WILLS AND TESTAMENTS,..... 115

Definition of the word; Word Legacy; Who can make a Will; What age was
required; Solemn Wills acknowledged by the Custom; Olograph Will; By Public
Instrument; Formalities; Execution of Wills; Inventory to be made; Cases in
which there is more property than necessary to pay the debts; Payment of debts
do not devolve on the Executors; Rule in case of Seizure; Account and delivery
by the Executors; In case there are many Executors; Practice for the renting of
Real Estates by the Executors; Modification of the Laws of Wills by Statutes;
Difficulties raised by the Canadian Lawyers; Mr. Panet's Act; Decision of the
Privy Council; English Rules; Definition; Devise; Nuncupative Wills; Wit-
nesses; Probate; Military Wills; Who are capable of making a Will; Prohibi-
tion; Jurisdiction of the Ecclesiastical Court; Consent of the Husband; Criminal
Conduct; Traitors; Felons; Suicide; Outlawed; What may be disposed by Will;
Of two Wills without date; Of the execution of a Will; Words to be used in a
Devise; Statute of Frauds; Attestation.

CHAPTER XI.—ACTIONS,..... 124

Definition of the word; Principal sorts of Actions; Petitory; Possessory; Com-
plaint; Simple Seizin; Actions tending to enforce the execution of Engagements;
Personal; Personal and Hypothecary; Purely Hypothecary; Real and Personal;
Purely Real; How extinguished; Rule for those who acquired from the first Ten-
ant; Decret; Abandonment for Discharge; Abandonment after Contestation;
Mortgages; Difference between a Mortgage and Pledge; Mortgage is indivisible;
Three sorts of Mortgage; Legal or Tacit Mortgage; Judicial Mortgage; In case
of an Appeal; Privilege upon Moveable Property; Consequence from that Rule;
Exceptions; Doctors; Servants; Tavern Keepers.

CHAPTER XII.—COMMERCIAL MARITIME LAWS,..... 131

Introduction; Rhodian Code; Laws of Oléron; French Ordinance of 1681; Eng-
lish Maritime Laws; Navigation Laws; New Act; Ships to be registered; By
whom to be registered; Forfeitures; Must be English built; Foreign Repairs;
Port of Registry; Where a Ship shall be deemed to belong; Qualifications; De-
claration; Addition in certain cases to the Declaration; Survey Rule to ascertain
the Tonnage of a Ship; Mode of measuring a Vessel afloat; Engine Room; The
Tonnage once ascertained; Security to be given; New Master must give a New
Bond; Certificates of Registry; Name of the Vessel not to be changed; Builder's
Certificate; Loss of the Certificate; Unlawful detention of the Certificate; Ships
altered; Vessels condemned; Prize Vessels; Transfer of Property; Must be
divided in sixty-four Shares; Exception; Bill of Sale must be produced; Transfer
of Property; Time of the Entry; Loss of Certificate; Bill of Sale must be produc-
ed; Bill of Sale not recorded; Change of Property; Copies received as Evidence;
Sales, &c. must be recorded *de novo*; Mortgage; Bankruptcy; General Rules;
Master or Captain; Must be a British Subject; Named by the majority of the
Owners; Duties of the Master; Pilots; Duties of the Pilots; Rules for Pilots in
Canada; Mate; Seamen; Freightage, Bills of Lading, and Risks of Voyage; Col-
lision of Ships; Risks in Landing; Selling Goods at Sea; Competition; Payment
of Freight; Passage Money; Wharfage; Bottomry; Demurrage; Delay; Goods
unshipped; Average; Common Loss; In Distress; Ship Riding out the Storm;
Salvage; What constitutes a Legal Wreck.

INTRODUCTION,..... 215

CHAPTER XXIII.—THE FRANKS,..... 217

Chiefs of the Franks; Kings of the Franks; Manners and Customs of the Franks
during the First Race of their Kings; Kings of France during the Second Race,
called Carolingians; Manners, Customs and Laws of the French during the Second
Race; Memorable Events under the Carolingian Race; Direct Branch of the
Capets, 340 years; Manners of the French under the First Branch of the House of
Capet; Memorable Events under the First Branch of the Capetian Race; Mem-
orable Events under the Valois; State of France under the House of Valois, to the
Reign of Louis XI.; State of France in the 16th Century; State of France
under Francis I., 1515 to 1547; Table of the Kings of England and France.

	<i>Page</i>
TEXT OF THE "COUTUME DE PARIS,".....	228
TITLE II.—Seigniorial Dues and Rights,.....	230
TITLE III.—Division of Property,.....	232
TITLE IV.—Complaint,.....	234
TITLE V.—Personal Actions and Real Actions,.....	236
TITLE VI.—Prescription,.....	238
TITLE VII.—Lineal Redemption,.....	242
TITLE VIII.—Arrests, Executions and Gageries,.....	250
TITLE IX.—Servitudes and Reports of Jurors,.....	254
TITLE X.—Community of Property,.....	262
TITLE XI.—Of Dower,.....	268
TITLE XII.—Of the Noble Guardianship and Bourgeoise,.....	272
TITLE XIII.—Of the Donations and Mutual Gift,.....	274
TITLE XIV.—Wills and Execution of Wills,.....	278
TITLE XV.—Successions,.....	282

ADDENDA.

Page 116, after Art. 292, see note at the foot of page 280, "Text of the *Coutume de Paris*."

ERRATA.

Introduction to Laws in France, for page 215 read 217.

APPENDIX TO THE FIRST VOLUME

OF THE

FUNDAMENTAL PRINCIPLES

OF THE

L A W S O F C A N A D A :

BEING A

SCHEDULE OF THE STATUTES

WHOLLY OR IN PART REPEALED BY THE IMPERIAL PARLIAMENT.

By these new acts are meant the five acts generally denominated Mr. Peel's Acts,—namely, the 7 and 8 Geo. IV. c. 27, 28, 29, 30, and 31, which at once struck out from the statute book no less than one hundred and forty-eight acts, 7 Geo. IV. c. 64, which passed in the session preceding Mr. Peel's acts, and the act 9 Geo. IV. c. 69, relating to night poaching.

1st. "An Act for improving the Administration of Criminal Justice in England," passed 26th May, 1826. 7 Geo. IV. c. 64.

2d. "An Act for repealing various Statutes in England relative to the Benefit of Clergy, and to Larceny and other offences connected therewith, and to Malicious Injuries to Property, and to Remedies against the Hundred," passed 21st June, 1827, 7 and 8 Geo. IV. c. 64.

3d. "An Act for consolidating and amending the Statutes in England relative to Offenses against the Person," passed the 27th June, 1828, 9 Geo. IV. c. 31.

4th. "An Act for the more effectual Prevention of Persons going armed by night for the Destruction of Game," passed 19th July 1828, 9 Geo. IV. c. 69.

These repealing acts have had as yet no effect on the criminal jurisprudence of Canada; but a schedule of the statutes wholly or in part repealed, showing the subject of the acts repealed and the clauses relating thereto in the new acts, may be of some use, as a similar improvement of the criminal jurisprudence of Canada may be expected.

SECTION I.—SUBJECTS OF THE STATUTES WHOLLY REPEALED,
AND NOTICE OF THE CLAUSES IN THE NEW ACTS THERE-
TO RELATIVE.

<i>Statutes wholly Repealed.</i>	<i>Subjects of Acts Repealed.</i>	<i>Clauses relating thereto in the new Acts.</i>
21 Ed. 1, st. 2, . . .	Malefactoribus Parcis, . . .	Coursing, hunting, and carrying away deer from any forest, chase, &c. see 7 & 8 G. 4, c. 29, s. 26 to 29.
7 H. 5, c. 9, . . .	Lollards and heretics, . . .	
1 R. 3, c. 3, . . .	Bailing, . . .	7 G. 4, c. 64, s. 1, 2, 3.
1 H. 7, c. 7, . . .	Unlawful hunting, . . .	7 & 8 G. 4, c. 29, s. 26, et seq.
3 H. 7, c. 2, . . .	Abduction of women, . . .	See 9 G. 4, c. 31, s. 19, 20.
c. 14, . . .	Offences in king's household	Bl. Com. vol. iv. p. 124, 5.
4 H. 7, c. 13, . . .	Taking Clergy from certain persons, . . .	7 & 8 G. 4, c. 28, s. 6, 7.
12 H. 7, c. 7, . . .	Petit Treason, . . .	Punishable as murder by 9 G. 4, c. 31, s. 2.
21 H. 8, c. 7, . . .	Thefts by servants, . . .	7 & 8 G. 4, c. 29, passim.
23 H. 8, c. 1, . . .	Clergy denied in petty treason, felony, or murder, except sub-deacons, . . .	Plea of Clergy abolished by 7 & 8 G. 4, c. 28, s. 6, but see s. 7.
c. 11, . . .	Clerks breaking prison, . . .	Obsolete.
24 H. 8, c. 5, . . .	Killing a Thief, . . .	Justifiable Homicide if he resists, but not specially mentioned in these late acts.
25 H. 8, c. 3, . . .	Standing mute and challenging, . . .	7 & 8 G. 4, c. 28, s. 2, 3.
c. 6, . . .	Vice of buggery, . . .	9 G. 4, c. 31, s. 15 & 18.
31 H. 8, c. 2, . . .	Fishing in ponds, . . .	7 & 8 G. 4, c. 29, s. 34, 35.
33 H. 8, c. 1, . . .	Counterfeit letters and tokens, . . .	7 & 8 G. 4, c. 29, s. 53, as to false pretences.
c. 23, . . .	Trials for Treason, . . .	This act appears to have become useless.
34 & 35 H. 8, c. 14, . . .	Certificates of Convicts in K. B. . . .	7 & 8 G. 4, c. 29, s. 74.
35 H. 8, c. 17, . . .	Preservation of woods, . . .	7 & 8 G. 4, c. 29, s. 40, 41; c. 13, s. 19, 20.
37 H. 8, c. 6, . . .	Burning frames, . . .	7 & 8 G. 4, c. 61.
c. 8, s. 2, . . .	As relates to horse stealing, . . .	7 G. 4, c. 64, s. 20; 7 & 8 G. 4, c. 29, s. 25.
2 & 3 Ed. 6, c. 24, . . .	For the trials of murders, &c. . . .	See 7 G. 4, c. 64, s. 4, and 9 G. 4, c. 31, s. 4 to 8.
c. 33, . . .	Horse-stealing denied clergy, . . .	7 & 8 G. 4, c. 29, s. 25.
c. 9, . . .	Robbing house, booth, &c. denied clergy, . . .	7 & 8 G. 4, c. 29, s. 11 to 14.
c. 10, . . .	Robbing in one shire, and flying into another denied clergy, . . .	7 G. 4, c. 64, s. 12; 7 & 8 G. 4, c. 29, s. 76.
1 & 2 P. & M. c. 13, . . .	Bailing by Justices, . . .	
2 & 3 P. & M. c. 10, . . .	Taking examination of persons suspected of manslaughter and felony, . . .	7 G. 4, c. 64, s. 1 to 3.
4 & 5 P. & M. c. 4, . . .	Accessaries in Murder, . . .	7 G. 4, c. 31, s. 3.
5 Eliz. c. 10, . . .	Reviving 21 H. 8, c. 7, relating to thefts by servants.	7 & 8 G. 4, c. 29, s. 46.

APPENDIX.

iii.

<i>Statutes wholly Repealed.</i>	<i>Subjects of Acts Repealed.</i>	<i>Clauses relating thereto in the new Acts.</i>
5 Eliz. c. 17,	Sodomy,	See 7 & 8 G. 4, c. 29, s. 9, and 9 G. 4, c. 31, s. 15, but not on co nomine.
. . . c. 21,	Taking fish, deer, &c. . .	7 & 8 G. 4, c. 29, ss. 26 to 29—ss. 31, 34, 35.
8 Eliz. c. 4,	Clergy taken from certain felons,	7 & 8 G. 4, c. 28, s. 6.
18 Eliz. c. 7,	Clergy taken from rape and burglary,	Burglary, c. 29, s. 11, 12—Rape, 9 G. 4, c. 31, s. 16 and 18.
27 Eliz. c. 13,	Hue and Cry,	See 7 G. 4, c. 64, s. 28, and 7 & 8 G. 4, c. 31.
31 Eliz. c. 4,	Embezzling armour, &c. . .	Obsolete.
39 Eliz. c. 9,	Abduction of women, . . .	9 G. 4, c. 31, s. 19, 20.
. . . c. 15,	Robbing empty houses in daytime denied clergy, . .	7 & 8 G. 4, c. 29, s. 12.
43 Eliz. c. 7,	Respecting misdemeanors, .	Vide c. 29, passim.
. . . c. 13,	Local, as to four Northern counties,	Obsolete.
1 Jac. 1. c. 8, (vulg. 2 Jac. 1),	Manslaughter,	9 G. 4. c. 31, s. 7, 8, 9.
. . . c. 11,	Bigamy,	s. 22.
3 Jac. 1, c. 13,*	Deer and conies,	
7 Jac. 1, c. 13,	Explaining ditto,	
13 Car. 2, st. 2, c. 1, . .	Regulating Corporations, .	9 G. 4, c. 17.
15 Car. 2, c. 2,	Destroying trees and woods, .	9 G. 4, c. 30, s. 19, 20. (If intending to steal them), c. 29, s. 38.
22 Car. 2, c. 5,	Stealing cloth from racks, .	7 & 8 G. 4, c. 29, s. 16.
23 & 23 Car. 2, c. 1, . .	Malicious wounding, . . .	9 G. 4, c. 31, s. 12.
. . . c. 7,	Malicious burning & maiming,	7 & 8 G. 4, c. 30, as to burning.
. . . c. 25, (except s. 1 to 3),	Preserving game and fish, .	7 & 8 G. 4, c. 30, s. 15.
25 Car. 2, c. 2,	Popish recusants,	9 G. 4, c. 17.
3 W. & M. c. 9,	Clergy taken from certain felonies,	Plea abolished by c. 28, s. 6, but see s. 7.
4 W. & M. c. 8,	Apprehending highwaymen, .	7 G. 4, c. 64, s. 28 to 30.
1 Ann. st. 2, c. 9, (except s. 3),	Accessaries and receivers, .	7 G. 4, c. 64, s. 9 to 11, and 7 & 8 G. 4, c. 29, s. 54.
5 Ann. c. 31,	Apprehending housebreakers,	7 G. 4, c. 64, s. 29.
6 Ann. c. 9, (vulg. 5, c. 6), .	To repeal a clause in 10 W. 3,	7 & 8 G. 4, c. 29, s. 74, &c.
9 Ann. c. 10,	Attempting life of privy councillor,	Attempts to kill are by s. 11, of 9 G. 4, made capital—distinctions as to rank or station of the party attacked is not continued, except of course as to the king and the branches of his family named in the 25th of Edward the 3d.
12 Ann. 4, st. 1, c. 7, . .	Robberies in houses, . . .	7 & 8 G. 4, c. 29, s. 11 to 14.
1 G. 1, c. 48,	Planting and preserving timber, and to prevent burning,	c. 30, s. 10.

* Recognized as existing in 2 Geo. 3. c. 29.

<i>Statutes wholly Repealed.</i>	<i>Subjects of Acts Repealed.</i>	<i>Clauses relating thereto in the new Act.</i>
5 G. 1, c. 28, . . .	Killing deer, &c. . . .	7 & 8 G. 4, c. 29, s. 26 to 29.
6 G. 1, c. 16, . . .	To explain 1 G. 1. c. 48, . . .	Repealed as above.
c. 23, . . .	To prevent robbery, burglary, &c., . . .	7 & 8 G. 4, c. 29, <i>passim</i> .
9 G. 1, c. 22, . . .	Going armed and disguised, and doing injuries to persons. . . .	Black act. The offences named in this act are provided for in 7 & 8 G. 4, c. 29 and 31, and 9 G. 4, c. 30.
2 G. 2, c. 21, . . .	Trial of Murder, . . .	9 G. 4, c. 31, s. 8.
4 G. 2, c. 32, . . .	Stealing lead and iron fixed, &c., . . .	s. 44.
6 G. 2, c. 37, . . .	Cutting sea banks, hopbinds, regulating manufactures of cloth, &c. &c., . . .	c. 30, s. 12, 18.
8 G. 2, c. 16, . . .	Amending statutes of Hue and Cry, . . .	The law of Hue and Cry does not appear to be continued.
c. 20, . . .	Destroying turnpikes and public works, . . .	7 & 8 G. 4, c. 30, s. 13, 14.
10 G. 2, c. 32. (except s. 10.) . . .	Continuing two Acts, . . .	
13 G. 2, c. 21, . . .	Destroying coal works, . . .	7 & 8 G. 4, c. 30, s. 5.
14 G. 2, c. 6, . . .	Ditto, sheep and cattle, . . .	s. 16.
15 G. 2, c. 34, . . .	To explain ditto, . . .	
16 G. 2, c. 30, . . .	Offices and employments, . . .	9 G. 4, c. 17.
22 G. 2, c. 24, . . .	Statute of Hue and Cry amended, . . .	The law respecting Hue and Cry appears to be done away, as also the liability of the hundred in case of robbery.
24 G. 2, c. 45, . . .	Robberies on rivers, &c. . .	7 & 8 G. 4, c. 29, s. 17.
25 G. 2, c. 10, . . .	Securing mines of black lead, . . .	c. 30, s. 5 to 7.
29 G. 2, c. 30, . . .	Stealing lead and other metals, . . .	c. 29, s. 37.
31 G. 2, c. 35, . . .	Destroying madder, . . .	See 7 & 8 G. 4, c. 30, s. 21, 22, as to roots.
2 G. 3, c. 29, . . .	To amend the 1 Jac. 1, for preserving game. It relates to pigeons, . . .	7 & 8 G. 4, c. 29, s. 33.
4 G. 3, c. 12, . . .	Destroying Banks, flood-gates, &c., . . .	c. 30, s. 12.
c. 31, . . .	Inter alia, pl. destroying trees, . . .	c. 29, s. 38, to 41.
5 G. 3, c. 14, . . .	Fish and eories, and Lincolnshire sea bank, . . .	s. 34, 35.
6 G. 3, c. 36, . . .	Preservation of trees, roots, &c., . . .	c. 30, s. 19, as to destroying trees.
c. 48, . . .	Preservation of timber and woods, . . .	c. 29, s. 38, to 41, damaging and stealing.
9 G. 3, c. 29, . . .	Destroying mills, works of mines, &c., . . .	c. 30, s. 2, 5, 6, 7.
c. 41, . . .	Inter alia, preserving holies, &c., . . .	c. 29, s. 38, 39.
10 G. 3, c. 18, . . .	Stealing dogs, . . .	—c. 30, s. 19, 20.
c. 48, . . .	Receivers, . . .	c. 29, s. 31, 32, s. 54, to 57.

APPENDIX.

v.

<i>Statutes wholly Repealed.</i>	<i>Subjects of Acts Repealed.</i>	<i>Clauses relating thereto in the new Act.</i>
13 G. 3, c. 31, s. 4, 5,	Punishing larceny and receivers,	passim.
c. 32, . . .	Stealing turnips, cabbages, &c.,	s. 43.
c. 33, . . .	Preserving poplars, alders, &c.,	s. 38
16 G. 3, c. 30 . . .	Deer,	to 41.—c. 30, s. 19. c. 29, s. 26 to 29.
21 G. 3, c. 68, . . .	To explain 4 G. 2, c. 32. lead, &c.,	c. 29.
21 G. 3, c. 69, . . .	Lead, &c.,	
22 G. 3, c. 58, . . .	Receivers,	7 & 8 G. 4, c. 29, s. 54 to 57.
31 G. 3, c. 35, . . .	That persons convicted of petty larceny may be witnesses,	The distinction between petty and grand larceny abolished by 7 & 8 G. 4, c. 29, s. 2.
c. 51,	Oyster fisheries, . . .	7 & 8 G. 4, c. 29, s. 36.
35 G. 3, c. 67, . . .	Bigamy,	9 G. 4, c. 31, s. 22.
36 G. 3, c. 9, (s. 3 to the end.)	Liability of hundreds— Assaults to obstruct the passage of grain, &c. &c.,	7 & 8 G. 4, c. 31, passim. 9 G. 4, c. 31, s. 26, . . .
39 G. 3, c. 85, . . .	Embezzlements of clerks and servants,	7 & 8 G. 4, c. 29, s. 48 to 51.
41 G. 3, c. 24, (U. K.)	Idemnity to persons whose wills, &c. destroyed, . .	c. 31.
c. 67,	Extending 93 G. 3. c. 32. .	Stealing, &c. vegetables 7 & 8 G. 4, c. 29, s. 43; Destroying, &c. c. 30, s. 21, 22.
c. 107	Deer,	7 & 8 G. 4, c. 20. s. 26 to 29.
43 G. 3, c. 58, (part of sec. 1.)	Malicious shooting at, wounding, stabbing, &c., using means to procure the miscarriage of woman, and setting fire to buildings.	7 & 8 G. 4, c. 29, s. 26 to 29.—c. 30, s. 2 &c.; 9 G. 4, c. 31, s. 11, 12, 13.
c. 113, (except sec. 6,)	Casting away and destroying ships, regulating trials of accessaries to murders, and felonies and man slaughters,	7 G. 4, c. 64, s. 9, 10, 11; 7 & 8 G. 4, c. 29, s. 61; c. 30; 9 G. 4, c. 31, s. 3, and 31.
45 G. 3, c. 66. . . .	Amending 6 G. 3, c. 36. and 9 G. 3. c. 41,	This relates to stealing bark of trees in the king's forests, &c. Quære, if specifically provided for in the new acts.
48 G. 3, c. 129, . . .	To repeal 8 Eliz. c. 4, as to taking clergy from the offence of privately stealing,	7 & 8 G. 4, c. 29, s. 6.
c. 144,	Preserving the oyster fisheries,	s. 36.
51 G. 3, c. 41. . . .	To repeal 18 G. 2. as far as the same takes clergy from persons in stealing cloth, &c. in printing grounds,	s. 16.
c. 129,	Deer,	s. 26 to 29.

<i>Statutes wholly Repealed.</i>	<i>Subjects of Acts Repealed.</i>	<i>Clauses relating thereto in the new Acts.</i>
52 G. 3, c. 63, . . .	Embazzling securities by Bankers, &c., . . .	s. 48 to 51.
c. 64, . . .	Extending 30 G. 2. c. 24. as to obtaining money by false pretences, bonds, &c., . . .	7 & 8 G. 4, c. 29, s. 53.
52 G. 3, c. 130, . . .	Destroying property and recovering the damages, . . .	7 & 8 G. 4, c. 30, passim.
54 G. 3, c. 101. . . .	Child stealing,	9 G. 4, c. 31, s. 21.
56 G. 3, c. 73,	Stealing from mines, . . .	7 & 8 G. 4, c. 29, s. 37.
c. 125,	Destroying buildings and machinery, and enabling the owners to recover damages,	c. 30, 31, but c. 31, gives redress in cases of riots only.
57 G. 3, c. 90,	Going armed at night to destroy game,	9 G. 4, c. 69 Night poaching.
59 G. 3, c. 27,	As to trials of felonies on rivers, canals, &c., . . .	7 & 8 G. 4, c. 29, s. 17.
c. 96,	To facilitate trials for robbing coaches, &c. and on boundaries of countries, . .	7 G. 4, c. 64, s. 9 to 12; 7 & 8 G. 4, c. 29, s. 76.
1 G. 4, c. 56,	Summary punishment for damaging wilfully, . . .	c. 30.
c. 102,	Stealing from mines, . . .	7 & 8 G. 4, c. 29, s. 37.
c. 115,	Repealing the 39 Eliz. making abduction capital; the 4 G. 1, which made returning from transportation capital; and the 5 G. 2, c. 30, making concealing effects by bankrupts capital,	As to abduction, see 9 G. 4, c. 31, s. 19, 20; Returning from transportation, 5 G. 4, c. 84; Concealing effects by bankrupts, 6 G. 4, c. 16.
1 G. 4, c. 117,	In effect restoring benefit of clergy in cases of stealing in shops, &c., and to 5s. value,	As to benefit of clergy, see 7 & 8 G. 4, c. 28, s. 6 and 7.
3 G. 4 c. 24,	Receivers,	7 & 8 G. 4, c. 29, s. 54 to 57.
c. 33,	Damages from rioters or malicious,	c. 30, 31, passim.
c. 38,	Manslaughter, servants robbing their masters and accessaries before the fact in larcenies and felonies, .	As to manslaughter, see 9 G. 4, c. 31, s. 9; Accessaries, 7 G. 4, c. 64; Larcenies generally, 7 & 8 G. 4, c. 29.
6 G. 4, c. 19,	Sending threatening letters, .	7 & 8 G. 4, c. 29, s. 8, 9.
c. 56,	Stealing property in mines and from corporations, .	s. 37.
7 G. 4, c. 69,	Stealing from gardens and hot-houses,	s. 42.

**SECTION II.—SUBJECTS OF THE STATUTES REPEALED IN PART
ONLY, WITH A SIMILAR NOTICE**

<i>Statutes Repealed in part.</i>	<i>Subjects of Acts Repealed in part.</i>	<i>Clauses relating thereto in the new Act.</i>
9 H. 3, st. 2, c. 10, .	Taking the King's Venison,	Deer stealing, &c. 7 & 8 G. 4, c. 29, s. 26 to 29.
c. 26, .	Inquisitions of Life or Member,	Murder, 9 G. 4, c. 31, s. 3 to 8.
52 H. 3, c. 25, .		Obsolete Act.
3 Ed. 1, c. 2 & 20, .		
c. 11 & 13, .	Murder, rape, and abduction,	Rape, 9 G. 4, c. 31, s. 16 & 18. Abduction, s. 19, 20. Murder, supra.
c. 15, .	Bailing,	7 G. 4, c. 64, s. 1, 2, 3.
4 Ed. 1, st. 3, c. 5, .	Bigamy,	Bigamy, 9 G. 4, c. 31, s. 22.
6 Ed. 1, c. 9, .	Killing without Felony, .	Homicide, casual and justifiable, 9 G. 4, c. 31, s. 10.
13 Ed. 1, st. 1, c. 29, 34, .	Rape and writ of odio, &c.	Rape, vide supra.
c. 46, .	Levying for damages, .	7 & 8 G. 4, c. 31.
st. 2, .	Felons, hue and cry, shutting gates, highways, &c.	Felons and Felonious acts, see 7 G. 4, c. 64, and 7 & 8 G. 4, c. 29, 30, and 31.
9 Ed. 2, st. 1, c. 3, .	Assaulting a Clergyman, .	Arresting a Clergyman on civil process whilst performing duty is made misdemeanor by the 9 G. 4, c. 31, s. 23. Any other assault is punishable by indictment.
1 Ed. 3, st. 1, c. 8, .	Trespassing in King's forests,	7 & 8 G. 4, c. 29, s. 26 to 29.
18 Ed. 3, st. 3, c. 2, .	Bigamy,	See 9 G. 4, c. 31, s. 22.
25 Ed. 3, st. 5, .	Petit Treason,	By 9 G. 4, c. 31, to be punished as Murder.
st. 6 c. 4, 5, vulg. st. 3, .	Clerks convicted of Treasons, &c.	Obsolete.
28 Ed. 3, c. 11, .	Liability of Hundreds, .	7 & 8 G. 4, c. 31.
34 Ed. 3, c. 22, .	Hawks,	c. 20, s. 31.
37 Ed. 3, c. 19, .		
50 Ed. 3, c. 5, .	Arresting Clergymen, .	See 9 G. 4, c. 31, s. 23.
1 R. 2, c. 15, .		
6 R. 2, st. 1 c. 6, .	Ravishing,	See sections 16 and 18 of 9 G. 4, c. 31.
5 H. 4, c. 5, .	Cutting tongues, &c. .	Ditto, s. 11, 12.
c. 6, .	Assaults,	As to assaults with felonious intention, s. 26. Assaults on Seamen, s. 26. Common Assaults, s. 27, 29.
2 H. 5, st. 1, c. 9, .	Fleeing for Murders, &c. .	Obsolete.
9 H. 5, c. 1, .	Misnomers in indictments, .	7 G. 4, c. 64, s. 19, 20.
8 H. 6, c. 12, s. 12, .	Stealing records,	7 & 8 G. 4, c. 29, s. 21.
11 H. 6, c. 11, .	Assaults, &c.	Vide supra.
18 H. 6, c. 12, .	As perpetuates 9 H. 5, .	
23 H. 6, c. 9, .	Sheriffs, &c., bailing persons,	7 G. 4, c. 64, s. 1, 2, 3.
33 H. 6, c. 1, .	Servants stealing their deceased master's goods, .	7 & 8 G. 4, c. 29, and all other acts respecting larceny, &c.

<i>Statutes Repealed in part.</i>	<i>Subjects of Acts Repealed in part.</i>	<i>Clauses relating thereto in the new Acts.</i>
3 H. 7, c. 3, . . .	Bail and mainprize, . . .	7 G. 4, c. 64, s. 1. to 3.
21 H. 8, c. 11, . . .	Restitution to persons robbed, . . .	See 7 & 8 G. 4, c. 29, s. 57:
32 H. 8, c. 3, . . .	Perpetuating, 25 H. 8, c. 3,	Repealed as above.
33 H. 8, c. 12, . . .	Murder, &c. . . .	9 G. 4, c. 31, s. 3 to 8.
1 Ed. 6, c. 12, s. 10, 14, .	As to house-breaking, robbing, horse-stealing, sacrilege, and clergy for ditto, Petty treason, murder and bigamy, . . .	7 & 8 G. 4, c. 28, s. 6, 7, & c. 29, ss. 6, 10, 11, 12, 13, 14, 15, 25. Vide supra, referring to 9 G. 4.
5 & 6 Ed. 6, c. 4, . . .	Striking with a weapon, . . .	Vide sect. 12 of 9 G. 4, c. 31.
4 & 5, P. & M. c. 4. . .	Accessaries to robbery and burning, . . .	7 G. 4, c. 64, s. 9 to 11.
c. 8, . . .	Abduction of girls under sixteen, . . .	7 & 8 G. 4, c. 29, s. 54.
5 Eliz. c. 4, . . .	Affrays, &c. by workmen, &c. . . .	9 G. 4, c. 31, s. 20.
13 Eliz. c. 25, s. 3, 18, 19.	As alters 35 H. 8, c. 17, Woods, . . .	s. 25.
31 Eliz. c. 12, s. 5, . . .	Accessaries in horse-stealing denied clergy, . . .	7 & 8 G. 4, c. 29, s. 38, 39.
2 Jac. 1, c. 27*, . . .	Doves, pigeons, and deers, . . .	7 G. 4, c. 64, s. 9, &c., and 7 & 8 G. 4, c. 29, s. 54.
22 & 23 Car. 2, c. 11, . . .	Destroying ships, . . .	7 & 8 G. 4, c. 29, s. 7, 8, and also s. 26 and 31.
4 W. & M. c. 23, . . .	Mutiny of mariners, . . .	7 & 8 G. 4, c. 30, s. 9.
c. 24, s. 12, . . .	Destroying pigeons, and fishing unlawfully, and burning heath, &c. . . .	9 G. 4, c. 31, s. 26.
10 W. 3, c. 12, (vulg. 10 & 11), c. 23, (except 7 & 8.	Explaining an Act of 3 W. & M. . . .	7 & 8 G. 4, c. 29, s. 33 and 34—c. 30, s. 15.
11 W. 3, c. 7, (vulg. 11 & 12, . . .	Burglary, robbery, &c. . . .	An Act expired.
9 Ann, c. 14, . . .	Assaults on seamen, . . .	7 & 8 G. 4, c. 29.
13 Ann 4, c. 21, (vulg. 12 Ann, st. 2, c. 15), s. 4, 5,	Assaulting and provoking to fight, . . .	9 G. 4, c. 31, s. 26.
1 G. 1, st. 2, c. 5, s. 4, 6, . . .	Relating to stealing from ships in distress, . . .	s. 27.
4 G. 1, c. 11, except s. 7, . . .	Liability of hundred in riots, Robbery, &c. transportation of felons, &c. except what relates to the Admiralty Jurisdiction, . . .	7 & 8 G. 4, c. 29, s. 18, 19.
12 G. I, c. 34, . . .	Combinations of workmen, . . .	c. 31, s. 2.
2 G. 2, c. 25, s. 3, . . .	Stealing orders and securities, . . .	This Act made returning from transportation capital. Quare if re-enacted. See 7 & 8 G. 4, c. 29.
11 G. 2, c. 22, s. 5 to the end, . . .	Liability of hundreds, . . .	See the 6 G. 4, as to combination. If any assault is committed in consequence of combination, s. 25 of 9 G. 4, c. 31, provides the punishment.
22 G. 2, c. 27; . . .	Beating, wounding, &c. . . .	7 & 8 G. 4, c. 29, s. 5.
22 G. 2, c. 46, s. 34, . . .	Combinations of workmen, . . .	7 & 8 G. 4, c. 31, passim.
	Writs of Execution against inhabitants of hundred, . . .	9 G. 4, c. 31, s. 12.
		Vide supra.
		See now 7 & 8 G. 4, c. 31, s. 3, 7, &c.

* Recognized as existing in 2 Geo. 3, c. 29.

APPENDIX.

ix.

<i>Statutes Repealed in part.</i>	<i>Subjects of Acts Repealed in part.</i>	<i>Clauses relating thereto in the new Acts.</i>
25 G. 2, c. 36, s. 1, . . .	Advertisements prohibited as to goods lost with an intimation that "no questions would be asked," . . .	7 & 8 G. 4, c. 29, s. 58, 59.
. . . s. 11, . . .	Payments to prosecutors in cases of felony, . . .	7 G. 4, c. 64.
. . . c. 37, . . .	Murder, . . .	9 G. 4, c. 31, s. 2 to 8.
26 G. 2, c. 19, s. 1, 2, 3, 4, 8, . . .	Stealing from wrecks, search warrants for ditto, . . .	7 & 8 G. 4, c. 29, s. 18.
. . .	Assaults to hinder salvage, . . .	9 G. 4, c. 31, s. 24.
27 G. 2, c. 3, . . .	Allowances to poor witnesses, . . .	7 G. 4, c. 64, s. 22 to 26.
28 G. 2, c. 19, s. 3, . . .	Burning goss, &c., and perpetuating, 25 G. 2, c. 36, . . .	7 & 8 G. 4, c. 30, s. 17.
. . . c. 36, s. 6, 7, 8, 9, . . .	Liability of parishes, &c., if trees, &c., are cut or destroyed, . . .	As to destroying trees, &c., see 7 & 8 G. 4, c. 30, s. 19; as to stealing, c. 29, s. 38, but the liability of hundreds, &c., to make good the damage is not continued by the late Act except in case of riots.
30 G. 2, c. 24, s. 1, . . .	Obtaining money by false pretences, . . .	7 & 8 G. 4, c. 59, s. 53.
18 G. 3, c. 19, . . .	Prosecutor's costs, . . .	7 G. 4, c. 64.
19 G. 3, c. 74, (except s. 70.	Transportation, imprisonment, &c. . .	2 & 8 G. 4; c. 28, s. 9.
30 G. 3, c. 48, . . .	Petit Treason, . . .	Distinction from murder no longer continued, see 9 G. 4.
33 G. 3, c. 67, s. 5 & 6, . . .	Firing ships and obstructing and assaulting seamen, . . .	7 & 8 G. 4, c. 30, s. 9, and 9 G. 4, c. 31, s. 24 to 29.
39 & 40 G. 3, c. 77, s. 1 & 5, . . .	Misdemeanor, stealing under 5s. wilful injuries, &c. . .	c. 29, 30.
43 G. 3, c. 59, . . .	As to laying the property, . . .	2 G. 4, c. 64, s. 22 to 24.
44 G. 3, c. 92, s. 7, 8, . . .	Theft and larceny, . . .	9 G. 4, c. 29, passim.
53 G. 3, c. 162, . . .	Relating to larceny as respects imprisonment and hard labour, . . .	7 & 8 G. 4, c. 29, passim.
57 G. 3, c. 19, s. 38, . . .	Liability of hundreds, towns, &c. . .	
58 G. 3, c. 38, . . .	Extending regulations of the 11 W. 3, . . .	As to seamen, see 9 G. 4, c. 13, s. 26 & 30.
. . . c. 70, . . .	Repealing those parts of several acts allowing rewards for prosecuting felons, . . .	7 G. 4, c. 64, s. 22.
1 G. 4, c. 90, . . .	Explaining 43 G. 3, c. 113, . . .	Vide supra.
1 & 2 G. 4, c. 88, . . .	Assaulting, wounding, &c. . .	Assaulting officers in order to rescue prisoners, see s. 12 and s. 25 of 9. G. 4, c. 31.
3 G. 4, c. 114, . . .	Receivers and false pretences, . . .	7 & 8 G. 4, c. 29, s. 54 to 57 as to receivers.
. . .	Assaults, . . .	As to false pretences, s. 53, 9 G. 4, c. 31, s. 24 to 29.
c. 126, s. 128, . . .	Felonies on turnpike trusts, . . .	7 & 8 G. 4, c. 30, s. 14, and 7 G. 4, c. 64, s. 17.

APPENDIX.

<i>Statutes Repealed in part.</i>	<i>Subjects of Acts Repealed in part.</i>	<i>Clauses relating thereto in the new Acts.</i>
3 G. 4, c. 46, . . .	Repealing several acts so far as they inflict capital punishments, . . .	See the exception at the end of clause 1, of c. 27.
c. 53, . . .	Giving clergy in certain larcenies, . . .	7 & 8 G. 4, c. 28, s. 6 & 7.
c. 54, . . .	Giving clergy in certain felonies, on convictions under the 9th of G. 1, and the 27th G. 2, . . .	
6 G. 4, c. 94, s. 7, 8, 9, and 10 . . .	Misdemeanors by factors, &c. . . .	s. 37.